

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**CHARGE AGAINST EMPLOYER**

**INSTRUCTIONS:**

| DO NOT WRITE IN THIS SPACE |                |
|----------------------------|----------------|
| Case                       | Date Filed     |
| 18-CA-148260               | March 17, 2015 |

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

**1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT**

|   |   |   |
|---|---|---|
| a. Name of Employer<br>GOPHER RESOURCES   |   | b. Tel. No.<br>(651)454-3310                      |
|   |   | c. Cell No.                                       |
| d. Address (street, city, state ZIP code)<br>3385 DODD ROAD, EAGAN, MN<br>55121 | e. Employer Representative<br>Catherine Abubo, HR | f. Fax No.<br>(651)454-7926                       |
|   |   | g. e-Mail   |
|   |   | h. Dispute Location (City and State)<br>Eagan, MN |
| i. Type of Establishment (factory, nursing home, hotel)<br>factory              | j. Principal Product or Service<br>smelting       | k. Number of workers at dispute location<br>200   |

1. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

**2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)**

Since about October 2014, the Employer, through (b) (6), (b) (7)(C) has interfered with, restrained, and coerced its employees by threatening employees that any claims against the Company will lose; by creating the impression of surveillance; and by threatening employees that they can lose their jobs, but management cannot.

In about early (b) (6), (b) (7)(C) 2015, the Employer, through (b) (6), (b) (7)(C) discriminated against employee (b) (6), (b) (7)(C) by suspending and then terminating (b) (6), (b) (7)(C) in order to discourage union activities or membership.

Since about October 2014, the Employer has permitted its (b) (6), (b) (7)(C) to threaten and discriminate against employees as described above.

**3. Full name of party filing charge (if labor organization, give full name, including local name and number)**

(b) (6), (b) (7)(C)

**4a. Address (street and number, city, state, and ZIP code)**

(b) (6), (b) (7)(C)

**4b. Tel. No.****4c. Cell No.**

(b) (6), (b) (7)(C)

**4d. Fax No.****4e. e-Mail**

(b) (6), (b) (7)(C)

**5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)****6. DECLARATION**

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

(b) (6), (b) (7)(C)

**Tel. No.****Office, if any, Cell No.****Fax No.****e-Mail**

Address: (b) (6), (b) (7)(C)  
(b) (6), (b) (7)(C)

Date:

3/17/15

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**  
**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

(b) (6), (b) (7)(C)



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 18  
330 2nd Ave S Ste 790  
Minneapolis, MN 55401-2214

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (612)348-1757  
Fax: (612)348-1785



Download  
NLRB  
Mobile App

March 17, 2015

(b) (6), (b) (7)(C)

Re: GOPHER RESOURCES  
Case 18-CA-148260

Dear (b) (6), (b) (7)(C):

The charge that you filed in this case on March 17, 2015 has been docketed as case number 18-CA-148260. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

**Investigator:** This charge is being investigated by Field Attorney TYLER J. WIESE whose telephone number is (612)348-1784. If this Board agent is not available, you may contact Supervisory Attorney NICHOLE L. BURGESS-PEEL whose telephone number is (612)348-1775.

**Right to Representation:** You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, [www.nlrb.gov](http://www.nlrb.gov), or at the Regional office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Presentation of Your Evidence:** As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

**Procedures:** We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website [www.nlrb.gov](http://www.nlrb.gov). However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website [www.nlrb.gov](http://www.nlrb.gov) or from the Regional Office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

**Qualifying for Backpay:** We are just beginning to investigate your charge and no decision has been made regarding the merits of your case. However, it is important that employees who might be entitled to backpay because of loss of employment understand their obligation to look for work in order to qualify for backpay if your case has merit. Accordingly, we urge you to promptly provide the Board agent with the names and addresses of all employees who might be entitled to backpay as a result of the charge you filed.

If backpay is due to an employee, the Board requires that the employee offset the backpay by promptly beginning to look for another job in the same or similar line of work. The Board has held that a reasonably diligent employee should begin searching for interim work within 2 weeks after the employee's termination or layoff or a refusal to hire the employee. If an employee cannot establish that he or she actively tried to mitigate his or her losses, the amount of money owed to the employee might be reduced.

Employees who might be owed backpay should keep careful records of when and where they have sought employment and of job search expenses such as mileage, parking, and copying resumes. Specifically, they should keep a record of each time they attempt to find work, including the date, name of the company, name of person with whom they spoke, the position sought, and the response received.

Very truly yours,

A handwritten signature in black ink, appearing to read "Marlin Osthus", with a stylized, cursive script.

MARLIN O. OSTHUS  
Regional Director



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

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March 17, 2015

CATHERINE ABUBO, HR  
GOPHER RESOURCES  
3385 DODD ROAD  
EAGAN, MN 55121

Re: GOPHER RESOURCES  
Case 18-CA-148260

Dear Ms. ABUBO:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

**Investigator:** This charge is being investigated by Field Attorney TYLER J. WIESE whose telephone number is (612)348-1784. If this Board agent is not available, you may contact Supervisory Attorney NICHOLE L. BURGESS-PEEL whose telephone number is (612)348-1775.

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If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

**Presentation of Your Evidence:** We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent.



Sending us your written account of the facts and a statement of your position is not enough to be considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

**Procedures:** We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, [www.nlrb.gov](http://www.nlrb.gov). However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, [www.nlrb.gov](http://www.nlrb.gov) or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Marlin O. Osthus". The signature is fluid and cursive, with the first name "Marlin" being more prominent.

MARLIN O. OSTHUS  
Regional Director

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

(b) (6), (b) (7)(C)

and

Gopher Resources, LLC

CASE 18-CA-148260

☒ REGIONAL DIRECTOR

☐ EXECUTIVE SECRETARY  
NATIONAL LABOR RELATIONS BOARD  
Washington, DC 20570

☐ GENERAL COUNSEL  
NATIONAL LABOR RELATIONS BOARD  
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF \_\_\_\_\_

Gopher Resources, LLC

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ REPRESENTATIVE IS AN ATTORNEY

☒ IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.

(REPRESENTATIVE INFORMATION)

NAME: Richard W. Pins and Matthew Tews, Stinson Leonard Street

MAILING ADDRESS: 150 South 5th Street, Suite 2300, Minneapolis, MN 55402

E-MAIL ADDRESS: richard.pins@stinsonleonard.com; matthew.tews@stinsonleonard.com

OFFICE TELEPHONE NUMBER: 612-335-7007; 612-335-1520

CELL PHONE NUMBER: 612-965-1805; 651-470-0153 FAX: 612-335-1657

SIGNATURE: 

(Please sign in ink.)

DATE: 3/23/15

<sup>1</sup> IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

**From:** [Pins, Richard](#)  
**To:** [Wiese, Tyler](#)  
**Cc:** [Tews, Matthew](#)  
**Subject:** Gopher Resource and Local 120 - 18-CA-148260  
**Date:** Friday, March 27, 2015 4:11:35 PM

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Tyler:

I'm just following up on our call of a moment ago. As indicated, both Matt and I are out next week, but we will be in touch early in the week of April 6, and will have a deferral letter to you by April 7.

Thanks.

Rick Pins

**Richard W. Pins** | Partner | Stinson Leonard Street LLP  
150 South Fifth Street, Suite 2300 | Minneapolis, MN 55402  
T: 612.335.7007 | M: 612.965.1805 | F: 612.335.1657  
rick.pins@stinsonleonard.com | [www.stinsonleonard.com](http://www.stinsonleonard.com)

(b) (6), (b) (7)(C) @stinsonleonard.com

This communication (including any attachments) is from a law firm and may contain confidential and/or privileged information. If it has been sent to you in error, please contact the sender for instructions concerning return or destruction, and do not use or disclose the contents to others.

(b) (6), (b) (7)(C) 2015, 10:20a-10:30a

(b) (6), (b) (7)(C)

Statement Re: Incident on February 26, 2015

Hire Date: (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) came into my office asking to speak with me and a Union steward about a situation where (b) (6), (b) (7)(C) felt (b) (6) was threatened by a member of management. The member of management (b) (6) was referring to is (b) (6), (b) (7)(C). Saying that this thing with (b) (6), (b) (7)(C) has been going on for a while and that it finally blew up.

(b) (6), (b) (7)(C) seemed pretty shaken up at the time. I asked (b) (6), (b) (7)(C) if (b) (6) was all right and asked which steward (b) (6) would like present and (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) is on vacation and (b) (6), (b) (7)(C) wasn't available. (b) (6), (b) (7)(C) then began talking about a situation between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) that took place by the time clocks prior to (b) (6), (b) (7)(C) coming to see me.

(b) (6), (b) (7)(C) said when (b) (6), (b) (7)(C) was punching out for break before going back out to the plant floor, (b) (6), (b) (7)(C) followed (b) (6), (b) (7)(C) from behind and confronted (b) (6), (b) (7)(C) saying, "Yo (b) (6), (b) (7)(C) what you doin coolin the kettle down?"

(b) (6), (b) (7)(C) responded to (b) (6), (b) (7)(C) telling (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) was following procedure. Then (b) (6), (b) (7)(C) said to (b) (6), (b) (7)(C), "You gonna play this game?"

(b) (6), (b) (7)(C) walked down the hall to get a battery for (b) (6), (b) (7)(C) respirator.

(b) (6), (b) (7)(C) responded with, "I'm not playin any games (b) (6), (b) (7)(C) I'm just doin my job. I have a family and house I gotta take care of."

(b) (6), (b) (7)(C) said something about (b) (6), (b) (7)(C) needing to worry about doing (b) (6), (b) (7)(C) job and do what (b) (6), (b) (7)(C) says or (b) (6), (b) (7)(C) "Gonna end up working at Walmart."

Then (b) (6), (b) (7)(C) walked back down the hall and was going to go back out on to the floor. As (b) (6), (b) (7)(C) was walked back down the hallway (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) was going to go to HR for (b) (6), (b) (7)(C) saying (b) (6), (b) (7)(C) was going to end up at Walmart and (b) (6), (b) (7)(C) said, "You gonna go there with that; you gonna go there with that?" (b) (6), (b) (7)(C) said to me (b) (6), (b) (7)(C) was going to go back out on the floor because (b) (6), (b) (7)(C) is used to getting talked to like that. That's when (b) (6), (b) (7)(C) said, "See that's why you're gonna end up at Walmart," as in I was challenging (b) (6), (b) (7)(C) and what (b) (6), (b) (7)(C) was saying. Then (b) (6), (b) (7)(C) called (b) (6), (b) (7)(C) fake and (b) (6), (b) (7)(C) said, "You think I'm fake?"

After (b) (6), (b) (7)(C) called (b) (6), (b) (7)(C) fake, (b) (6), (b) (7)(C) said, "You think you're the big shot." And that's when (b) (6), (b) (7)(C) said to (b) (6), (b) (7)(C), "You know where I'm at; I'm in (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) turned to (b) (6), (b) (7)(C) as if to say "Are you hearing this?" Then (b) (6), (b) (7)(C) said to (b) (6), (b) (7)(C), "Are you threatening me? Are you threatening me?"

Then (b) (6), (b) (7)(C) left and (b) (6), (b) (7)(C) called for a Union rep and nobody answered. So (b) (6), (b) (7)(C) walked into (b) (6), (b) (7)(C) office and said we need to get (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) involved. (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) would try to get a hold of (b) (6), (b) (7)(C) and started trying to call (b) (6), (b) (7)(C) also called me at this time. Then (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) to leave and hang out until (b) (6), (b) (7)(C) comes and (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) to stay.

(b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) was walking back and forth by the time clocks waiting for (b) (6), (b) (7)(C) and trying to call (b) (6), (b) (7)(C)

After (b) (6), (b) (7)(C) sent (b) (6), (b) (7)(C) to the time clocks, (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) called RMPC to get a hold of (b) (6), (b) (7)(C). That's when (b) (6), (b) (7)(C) got a hold of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) was on vacation and that (b) (6), (b) (7)(C) couldn't send (b) (6), (b) (7)(C) at that time.

(b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) walked into (b) (6), (b) (7)(C) office shortly after and saw a new employee in there so (b) (6), (b) (7)(C) waited for them to leave. After the person left (b) (6), (b) (7)(C) went into (b) (6), (b) (7)(C) office and said to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) wanted to get (b) (6), (b) (7)(C) union steward because (b) (6), (b) (7)(C) wanted to talk about how (b) (6), (b) (7)(C) threatened (b) (6), (b) (7)(C). Then (b) (6), (b) (7)(C) walked in and (b) (6), (b) (7)(C) said to (b) (6), (b) (7)(C) "You gonna deny that, you gonna deny saying that?" (b) (6), (b) (7)(C) was referring to comment about ending up working at Walmart and saying to (b) (6), (b) (7)(C) "You know where I'm at, I'm in (b) (6), (b) (7)(C)"

(b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) said to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) needed to do (b) (6), (b) (7)(C) Union stuff on (b) (6), (b) (7)(C) time. (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) asked (b) (6), (b) (7)(C) if (b) (6), (b) (7)(C) was on break and (b) (6), (b) (7)(C) said no. Then (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) to go back out on the floor if (b) (6), (b) (7)(C) not punched out for break.

That's when (b) (6), (b) (7)(C) came up to see me.

During my conversation with (b) (6), (b) (7)(C) also talked about a couple work incidents involving pipes freezing two days in a row and resulting in down time. One incident was on Tuesday and it involved (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). Wednesday's incident was regarding a caustic nitre wash and it involved (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) said that (b) (6), (b) (7)(C) had approached (b) (6), (b) (7)(C) on Tuesday's incident and told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) to write them up.

In my conversation with (b) (6), (b) (7)(C) also made reference to another employee, (b) (6), (b) (7)(C), and said that (b) (6), (b) (7)(C) had told (b) (6), (b) (7)(C) about a time when (b) (6), (b) (7)(C) said to (b) (6), (b) (7)(C), "It's me against you guys," and made (b) (6), (b) (7)(C) arms and hands into a large machine gun, pretending to shoot across the room. (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) is terrified of (b) (6), (b) (7)(C). And that (b) (6), (b) (7)(C) won't come talk to HR because (b) (6), (b) (7)(C) is afraid (b) (6), (b) (7)(C) is going to lose (b) (6), (b) (7)(C) job.

(b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) knows not to say anything in front of anybody. Says (b) (6), (b) (7)(C) smart and does it when it's just you and (b) (6), (b) (7)(C) because that way no one else is around to hear it and it's just a (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) said situation.

(b) (6), (b) (7)(C) told me to ask any of the guys in refining if they think (b) (6), (b) (7)(C) respects them and (b) (6), (b) (7)(C) thinks a lot of them will say no, (b) (6), (b) (7)(C) doesn't.

(b) (6), (b) (7)(C) 2015; follow up conversation with (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) - When (b) (6), (b) (7)(C) directed you to go back to work, why didn't you follow (b) (6), (b) (7)(C) instruction?

(b) (6), (b) (7)(C) - Because (b) (6), (b) (7)(C) was getting calls from (b) (6), (b) (7)(C). I said, (b) (6), (b) (7)(C) I need to talk with you about (b) (6), (b) (7)(C) threatening me." (b) (6), (b) (7)(C) told me to get back out on to the floor but I said, "I need to talk to you because

(b) (6), (b) (7)(C) just threatened me." That's when (b) (6), (b) (7)(C) gave me a slip to sign for my points, while I'm telling (b) (6), (b) (7)(C) that I'm getting threatened.

HR  
(b) (6), (b) (7)(C) Did you let (b) (6), (b) (7)(C) know you wanted to speak with me or that you were coming to see me before you came to see me?

HR  
(b) (6), (b) (7)(C) Yeah. I told (b) (6), (b) (7)(C) I was coming to see you. When (b) (6), (b) (7)(C) told me to go back out on to the floor because of something about the injuries that could happen with being short staffed and production, I was like, "No, I need to talk to my Union people now." Then (b) (6), (b) (7)(C) said I need to deal with my Union people on my own time. That's when I told (b) (6), (b) (7)(C) I was coming to see HR.

(b) (6), (b) (7)(C) When (b) (6), (b) (7)(C) told you to go back out on the floor, did (b) (6), (b) (7)(C) say (b) (6), (b) (7)(C) contact a Union steward and follow up with you so that you could talk about it?

(b) (6), (b) (7)(C) No. (b) (6), (b) (7)(C) didn't say anything about talking about it later. (b) (6), (b) (7)(C) just told me to get back out onto the floor. I told (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was gonna go talk to HR and (b) (6), (b) (7)(C) still told me to get back out on the floor.

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) talked to me today and brought up the incident with (b) (6), (b) (7)(C) We didn't get much into it. I just remember (b) (6), (b) (7)(C) saying, "I've never liked (b) (6), (b) (7)(C) anyways."

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) came to me after all this happened and I talked to you and said that (b) (6), (b) (7)(C) talked to (b) (6), (b) (7)(C) in the lab while (b) (6), (b) (7)(C) was running a sample – that would have been around 9:45a. (b) (6), (b) (7)(C) was telling (b) (6), (b) (7)(C) "You guys aint gonna win, we gonna win, you gonna lose." (b) (6), (b) (7)(C) told me, "I can't lose my job."

(b) (6), (b) (7)(C) 2015; Review statements with (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C) 15 and (b) (6), (b) (7)(C) 15

In (b) (6), (b) (7)(C) original statement on (b) (6), (b) (7)(C) 15 (b) (6), (b) (7)(C) left out the words "mother fucker" when referring to (b) (6), (b) (7)(C) calling (b) (6), (b) (7)(C) "fake" because (b) (6), (b) (7)(C) didn't think anything of it or feel threatened by it because (b) (6), (b) (7)(C) said that's the way (b) (6), (b) (7)(C) talks to us.

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

115

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

115

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

115



(b) (6), (b) (7)(C) 2015, 2:30p

(b) (6), (b) (7)(C)

Statement Re: Incident on (b) (6), (b) (7)(C), 2015

Hire Date: (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) – Hi (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) I'd like to ask (b) (6), (b) (7)(C) some follow up questions regarding the statement that we took from (b) (6), (b) (7)(C). While I'm asking questions and I am going to type as we talk so that I make sure we accurately capture what was said.

(b) (6), (b) (7)(C) – before we get started, is the investigation involving (b) (6), (b) (7)(C) or both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)?

(b) (6), (b) (7)(C) – The investigation is involving the incident that took place between both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) – So if the investigation is involving (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) why isn't (b) (6), (b) (7)(C) suspended?

(b) (6), (b) (7)(C) – Yeah, I've asked that and you told me its company policy. I'm the one that gets threatened and I'm the one that gets sent home. That doesn't seem right.

(b) (6), (b) (7)(C) – We are not here to discuss that right now, we are here because I'd like to ask you some follow up questions. May we proceed?

(b) (6), (b) (7)(C) – Go ahead.

(b) (6), (b) (7)(C) – In (b) (6), (b) (7)(C) statement, (b) (6), (b) (7)(C) said that you made a comment to (b) (6), (b) (7)(C) saying "You ain't shit, you aint't shit, you ain't shit, you're a fake ass mother fucker." Do you recall saying this to (b) (6), (b) (7)(C)?

(b) (6), (b) (7)(C) – That's what (b) (6), (b) (7)(C) said to me. And that's when (b) (6), (b) (7)(C) said are, "You gonna go there with that?, You gona go there with that?" Like as in I'm fake cuz I'm gonna go to you and report this to HR. (b) (6), (b) (7)(C) said that I was a fake mother fucker. (b) (6), (b) (7)(C) didn't say "You ain't shit." (b) (6), (b) (7)(C) said I was a fake ass mother fucker because I told (b) (6), (b) (7)(C) was gonna go to HR for (b) (6), (b) (7)(C) telling me I'm gonna end up at Walmart. That's when (b) (6), (b) (7)(C) called me a fake ass mother fucker.

(b) (6), (b) (7)(C) – That's when (b) (6), (b) (7)(C) said that's why I'm gonna end up at Walmart for the second time, that's when I said I'm gonna talk to HR and that's when (b) (6), (b) (7)(C) said I'm a fake mother fucker.

(b) (6), (b) (7)(C) – Then I'm like "I'm the fake ass mother fucker?" And said you think "you're a big shot."

(b) (6), (b) (7)(C) – I said, "You're fake as hell," then that's when (b) (6), (b) (7)(C) said to me, "You know where I be at, I be at (b) (6), (b) (7)(C)." That's when I looked at (b) (6), (b) (7)(C) and said, "Are you hearing this?"

(b) (6), (b) (7)(C) – Did (b) (6), (b) (7)(C) comment when you asked (b) (6), (b) (7)(C) that?

(b) (6), (b) (7)(C) – I have no idea.

(b) (6), (b) (7)(C) – Then that's when I got on the phone and tried to call HR but there was no answer. And that's probably when (b) (6), (b) (7)(C) went into the shift meeting room.

(b) (6), (b) (7)(C) — Then I asked (b) (6), (b) (7)(C) if (b) (6), (b) (7)(C) could get me in through where the manager's area because I assumed it was locked, and I know (b) (6), (b) (7)(C) sweeps so I figured (b) (6), (b) (7)(C) could get me in there. And (b) (6), (b) (7)(C) was there so that's why I went to talk to (b) (6), (b) (7)(C). If (b) (6), (b) (7)(C) would have been there I obviously would have went to (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) refining. But (b) (6), (b) (7)(C) just happened to be there.

(b) (6), (b) (7)(C) — So I walked into (b) (6), (b) (7)(C) office and said we need to get HR and (b) (6), (b) (7)(C) involved.

(b) (6), (b) (7)(C) — (b) (6), (b) (7)(C) said "you got a big mouth" and I as like "Oh I got a big mouth?" That's when (b) (6), (b) (7)(C) asked me to get out of the room, so I left. I think (b) (6), (b) (7)(C) knew it was getting escalated and (b) (6), (b) (7)(C) was trying to calm it down.

(b) (6), (b) (7)(C) — So I went out by the time clocks trying to call (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). I'm sure you'll see me on the video pacing back and forth. I called Refining to tell them that I wasn't on the floor because I had to break (b) (6), (b) (7)(C) at 10a. Then I went to call RMPC because that's where (b) (6), (b) (7)(C) is. That's when I got a hold of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) told me (b) (6), (b) (7)(C) was on vacation and that (b) (6), (b) (7)(C) couldn't come at that point and time.

(b) (6), (b) (7)(C) — After I talked to (b) (6), (b) (7)(C) that's when I went into (b) (6), (b) (7)(C) office. That's when (b) (6), (b) (7)(C) said to me, "What's goin on here (b) (6), (b) (7)(C)?" I told (b) (6), (b) (7)(C) threatened me and that's when (b) (6), (b) (7)(C) came in and sat down. (b) (6), (b) (7)(C) heard me tell (b) (6), (b) (7)(C) that and that's when (b) (6), (b) (7)(C) said it again to me in front of (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) swore right in front of (b) (6), (b) (7)(C) and called me a "fake ass mother fucker." Then (b) (6), (b) (7)(C) gave me a warning to sign about my points and told me I needed to get back out on the floor. (b) (6), (b) (7)(C) said something about safety and production and there not being enough people. And that's when I said, "Man this (b) (6), (b) (7)(C) threatened me," and I told (b) (6), (b) (7)(C) I was going to see HR.

(b) (6), (b) (7)(C) — (b) (6), (b) (7)(C) told me to go on the floor and to "deal with the Union stuff on your time." Those were (b) (6), (b) (7)(C) exact words.

(b) (6), (b) (7)(C) — In our discussion you did say (b) (6), (b) (7)(C) called you fake but you left out the swearing.

(b) (6), (b) (7)(C) — Well yeah, that's the way (b) (6), (b) (7)(C) said it.

(b) (6), (b) (7)(C) — Did you swear back at (b) (6), (b) (7)(C)?

(b) (6), (b) (7)(C) — No, I swore as in saying, "I'm the fake ass mother fucker?" When (b) (6), (b) (7)(C) said that to me. But not swearing at (b) (6), (b) (7)(C) not like that, nope.

(b) (6), (b) (7)(C) — Is there anything else you'd like to say with regard to the situation?

(b) (6), (b) (7)(C) — I'd like to see what you typed.

(b) (6), (b) (7)(C) — I will get this cleaned up and have you review it.

(b) (6), (b) (7)(C) — what part of what (b) (6), (b) (7)(C) said to you made you feel threatened?

(b) (6), (b) (7)(C) — It was about (b) (6), (b) (7)(C) telling me I'm gonna end up at Walmart if I didn't do what he said and (b) (6), (b) (7)(C) telling me "You know where I be at in (b) (6), (b) (7)(C)." "

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

-15

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

15

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

15

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

15

(b) (6), (b) (7)(C) 2015, 10:47a

(b) (6), (b) (7)(C)

Statement Re: Investigation between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) called me around 10:40a asking to speak with me. (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) wanted to talk with me now if (b) (6), (b) (7)(C) could without (b) (6), (b) (7)(C) and that (b) (6), (b) (7)(C) could talk with (b) (6), (b) (7)(C) later.

(b) (6), (b) (7)(C) Basically I already told (b) (6), (b) (7)(C) what happened. (b) (6), (b) (7)(C) called me up last night and told me to go win an Oscar or globe or something and go cry in front of you (b) (6), (b) (7)(C) And make (b) (6), (b) (7)(C) look like a thug basically.

(b) (6), (b) (7)(C) what specifically did (b) (6), (b) (7)(C) say to you when (b) (6), (b) (7)(C) called you last night?

(b) (6), (b) (7)(C) Just like I feel traded by (b) (6), (b) (7)(C) like this is our chance and stuff cuz if not they're gonna come after us.

(b) (6), (b) (7)(C) I think (b) (6), (b) (7)(C) talked to you on Thursday and told you that I felt threatened by (b) (6), (b) (7)(C) and that we didn't see eye to eye.

(b) (6), (b) (7)(C) When did (b) (6), (b) (7)(C) tell you (b) (6), (b) (7)(C) told me this?

(b) (6), (b) (7)(C) Thursday. And (b) (6), (b) (7)(C) told me to wait for the phone call saying that you were going to call me on Friday. And you never did, you guys ended up calling (b) (6), (b) (7)(C) on Friday. I told (b) (6), (b) (7)(C) last night and (b) (6), (b) (7)(C) told me not to get involved in nothing.

(b) (6), (b) (7)(C) Have you spoken with (b) (6), (b) (7)(C) in the last week other than last night?

(b) (6), (b) (7)(C) *did not answer the question*

(b) (6), (b) (7)(C) Last night (b) (6), (b) (7)(C) called me up and said that you guys were gonna talk to me and that (b) (6), (b) (7)(C) was gonna be present.

(b) (6), (b) (7)(C) What time did (b) (6), (b) (7)(C) call you last night?

(b) (6), (b) (7)(C) I wanna say around 6:42p. (b) (6), (b) (7)(C) was calling me to give me the heads up that I make sure I go win an Oscar and make sure I cry.

(b) (6), (b) (7)(C) When (b) (6), (b) (7)(C) called you, did (b) (6), (b) (7)(C) ask you to lie to the company or to tell the truth?

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C) told me to say like I felt threatened by (b) (6), (b) (7)(C) And when (b) (6), (b) (7)(C) spoke with you about me (b) (6), (b) (7)(C) told me (b) (6), (b) (7)(C) made it seem like I felt threatened by (b) (6), (b) (7)(C) and made it seem like we don't see eye to eye and stuff like that.

(b) (6), (b) (7)(C) Do you feel threatened by (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) No, if I feel threatened I'll come and tell you. I don't need (b) (6), (b) (7)(C) to tell me. Like when (b) (6), (b) (7)(C) told me over the phone (b) (6), (b) (7)(C) made it seem like (b) (6), (b) (7)(C) had to step in and come and tell you. Like when I was telling

(b) (6), (b) (7)(C) and (b) (6), (b) (7) I feel like when (b) (6), (b) (7)(C) comes back (b) (6), (b) (7) gonna come after me. (b) (6), (b) (7)(C) gonna take it out on me.

(b) (6), (b) (7)(C) — I don't know if you remember when (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) got into it (b) (6), (b) (7) brought my name up. And when I saw (b) (6), (b) (7) in the hallway (b) (6), (b) (7) went off on me in front of you and (b) (6), (b) (7) I'm more worried that (b) (6), (b) (7) is gonna go off on me. And I do follow (b) (6), (b) (7) a lot. We're friends at work but not outside of work though. That's it. I don't wanna get too much involved.

(b) (6), (b) (7) — What was your response to (b) (6), (b) (7) when (b) (6), (b) (7) told you to act like you were winning an Oscar and to cry when you were talking to the company?

(b) (6), (b) (7) — I was just like whatever, all right (b) (6), (b) (7)(C) all right. And that was it. (b) (6), (b) (7) kind of made it seem like if we don't go after (b) (6), (b) (7)(C) they are gonna come after us. But I didn't do anything I'm doing my job. I feel like I'm getting dragged into a fight and it's not even my fight. And if I have any problems then I'm gonna come see you.

(b) (6), (b) (7) — Have you had any issue with (b) (6), (b) (7)(C) in the past?

(b) (6), (b) (7) — Yeah, the only issue I had was the caustic niter. So I was paging (b) (6), (b) (7) that day Because (b) (6), (b) (7) told me that I need to follow the batch sheet and that's what I told (b) (6), (b) (7)(C) I was doing.

(b) (6), (b) (7) — What was the issue with (b) (6), (b) (7)(C) and the caustic niter?

(b) (6), (b) (7) — The batch sheet says do a caustic niter wash between 700 and 725 and (b) (6), (b) (7)(C) wanted me to do it at 800 degrees. I told (b) (6), (b) (7) I was doing it there because that's what the batch sheet says. So when (b) (6), (b) (7) told me to do it at 800 I went ahead and did it. (b) (6), (b) (7)(C) said, "Stop playing games," I said, "I'm not playing games, I'm following the batch sheet." And (b) (6), (b) (7) even told me to follow the batch sheet.

(b) (6), (b) (7) — And then (b) (6), (b) (7) and (b) (6), (b) (7)(C) got into it. I don't know what about.

(b) (6), (b) (7) — Has (b) (6), (b) (7) called you any other time this past week?

(b) (6), (b) (7) — (b) (6), (b) (7) called me on Thursday before (b) (6), (b) (7) got suspended to give me the heads up and to tell me that (b) (6), (b) (7) talked to you. And then (b) (6), (b) (7) called me yesterday to give me the heads up that you guys were gonna talk to me.

(b) (6), (b) (7) — Did (b) (6), (b) (7) tell you anything else in your conversation with (b) (6), (b) (7) last night?

(b) (6), (b) (7) — No (b) (6), (b) (7) just told me a little bit of the conversation you guys had and that you are gonna be calling me up to your office and to make it seem like I felt threatened by (b) (6), (b) (7)(C) That's when I told (b) (6), (b) (7), "No man, I ain't gonna do that."

(b) (6), (b) (7) — The only thing that I'm worried about is (b) (6), (b) (7)(C) and (b) (6), (b) (7) gonna know that I didn't lie for (b) (6), (b) (7) and when (b) (6), (b) (7) comes back (b) (6), (b) (7) gonna call me names and stuff. And that was my point that I was trying to get across to (b) (6), (b) (7)(C) and (b) (6), (b) (7) cuz (b) (6), (b) (7)(C) knows how (b) (6), (b) (7) is.

(b) (6), (b) (7)(C) — I had nothing to do with it (b) (6), (b) (7)(C) Can you tell me where I fit in with this? I didn't get into an argument with management or nothing. I kind of fear (b) (6), (b) (7)(C) more, not physically or anything, because I hang around with (b) (6), (b) (7)(C) a lot we bs around a lot and everything. And if things don't go (b) (6), (b) (7)(C) way at work (b) (6), (b) (7)(C) gonna get other guys at work not to talk to me.

(b) (6), (b) (7)(C) — And basically last night (b) (6), (b) (7)(C) said something like (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) about Walmart, where (b) (6), (b) (7)(C) was going to be fired or working at Walmart. When (b) (6), (b) (7)(C) told me that I said, "Did (b) (6), (b) (7)(C) really say that?" And (b) (6), (b) (7)(C) said, "No (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) Did (b) (6), (b) (7)(C) say why (b) (6), (b) (7)(C) made that up?

(b) (6), (b) (7)(C) — No (b) (6), (b) (7)(C) didn't want to get into details because (b) (6), (b) (7)(C) told me I was gonna open up my mouth. But I think that's what (b) (6), (b) (7)(C) told you, that that's what (b) (6), (b) (7)(C) said.

(b) (6), (b) (7)(C) — But (b) (6), (b) (7)(C) did tell me that (b) (6), (b) (7)(C) called you after work and made it seem like I was scared of (b) (6), (b) (7)(C) or something.

(b) (6), (b) (7)(C) — When (b) (6), (b) (7)(C) told you to make it seem like you were afraid of (b) (6), (b) (7)(C) do you remember what you said to (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) — I said, "No." My understanding with the conversation (b) (6), (b) (7)(C) had with you after work on Thursday is that (b) (6), (b) (7)(C) made it seem like I was really afraid of (b) (6), (b) (7)(C). And (b) (6), (b) (7)(C) told me that when (b) (6), (b) (7)(C) called you (b) (6), (b) (7)(C) told you that me and (b) (6), (b) (7)(C) don't see eye to eye and that I was scared of (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) said I have (b) (6), (b) (7)(C) problems, that you guys already know. And then (b) (6), (b) (7)(C) brought my (b) (6), (b) (7)(C) into it saying, "Man you (b) (6), (b) (7)(C) too and they feel sorry for (b) (6), (b) (7)(C) people." (b) (6), (b) (7)(C) like, "You've been in a (b) (6), (b) (7)(C)." Making it seem like you'll feel sorry for me because of that.

(b) (6), (b) (7)(C) — When talking with (b) (6), (b) (7)(C) brought up a situation with you and (b) (6), (b) (7)(C) said that (b) (6), (b) (7)(C) said to (b) (6), (b) (7)(C) "It's you against us" and then held (b) (6), (b) (7)(C) hands up like a machine gun shooting across the room. Do you recall this happening?

(b) (6), (b) (7)(C) — No. (b) (6), (b) (7)(C) trying to make (b) (6), (b) (7)(C) look like a thug.

(b) (6), (b) (7)(C) — Did that situation ever happen?

(b) (6), (b) (7)(C) — When (b) (6), (b) (7)(C) was a blue hat, yeah, just playing around. But that's what (b) (6), (b) (7)(C) wanted to use against (b) (6), (b) (7)(C). But no I'm not gonna say that.

(b) (6), (b) (7)(C) — Do you remember when this happened?

(b) (6), (b) (7)(C) — It was a long, long time ago. (b) (6), (b) (7)(C) was just playing around. I used to say (b) (6), (b) (7)(C) me and you like this (b) (6), (b) (7)(C) crossed (b) (6), (b) (7)(C) fingers) we're like tight. And then (b) (6), (b) (7)(C) said, "No (b) (6), (b) (7)(C) it's just me by myself," and then (b) (6), (b) (7)(C) did the gun thing and shot up in the air. But it was just me and (b) (6), (b) (7)(C) and no one was around but (b) (6), (b) (7)(C) didn't point it at me. This happened a long, long time ago.

(b) (6), (b) (7)(C) — Had (b) (6), (b) (7)(C) ever said anything to you that made you felt threatened?



(b) (6), (b) (7) No, (b) (6), (b) (7) hasn't. If (b) (6), (b) (7) would have I would have come up here straight to HR.

(b) (6), (b) (7) have you ever felt intimidated or threatened by (b) (6), (b) (7)

(b) (6), (b) (7) - When things don't go (b) (6), (b) (7) way, yeah. Like that time when (b) (6), (b) (7) and (b) (6), (b) (7)(C) got into it and I was coming upstairs to talk to you (b) (6), (b) (7) went off on me in the hallway. And my problem there was I had nothing to do with the problem (b) (6), (b) (7) got into with (b) (6), (b) (7)(C) and (b) (6), (b) (7) brought my name into it. And in this conversation that happened with (b) (6), (b) (7) and (b) (6), (b) (7)(C) I had nothing to do with it and (b) (6), (b) (7) wants to use me like I feel threatened by (b) (6), (b) (7)(C) and no man, I'm not.

(b) (6), (b) (7) - Stop bringing my name up. (b) (6), (b) (7) brought it up with (b) (6), (b) (7)(C) now you're bringing it up with (b) (6), (b) (7)(C) Like if we don't go after (b) (6), (b) (7) they're gonna come after us.

(b) (6), (b) (7) - When (b) (6), (b) (7) said "they're gonna come after us," who does (b) (6), (b) (7) mean by "they?"

(b) (6), (b) (7) Management or something. Basically my understanding is if we don't do anything about it now they're gonna come after us. But I didn't do anything.

(b) (6), (b) (7)(C) Why is (b) (6), (b) (7) making it look like I'm scared to talk to (b) (6), (b) (7)(C) or management? I'm not scared. If I was I'd come and talk to you. I come in and do my job and that's it.

(b) (6), (b) (7) - When (b) (6), (b) (7) told you about the Walmart comment, did (b) (6), (b) (7) bring up any other comments that (b) (6), (b) (7) said (b) (6), (b) (7)(C) said?

(b) (6), (b) (7) - No, all (b) (6), (b) (7) told me was that (b) (6), (b) (7) told you (b) (6), (b) (7)(C) said something about (b) (6), (b) (7) ending up at Walmart and that (b) (6), (b) (7) was gonna get fired, but when I said, "Did (b) (6), (b) (7) really say that?" (b) (6), (b) (7) said, "No."

(b) (6), (b) (7) - But (b) (6), (b) (7) did give me the heads up after work that (b) (6), (b) (7) called you and made me seem like a big teddy bear that I was scared of (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

/15

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

/15

March 5, 2015, 2:09p

(b) (6), (b) (7)(C)

Statement Re: Investigation between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)

Hire Date: (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) – Tell me why we're here?

(b) (6), (b) (7)(C) – (b) (6), (b) (7)(C) has a statement to make when (b) (6), (b) (7)(C) talked to (b) (6), (b) (7)(C) over the phone and when I talked to (b) (6), (b) (7)(C). I think (b) (6), (b) (7)(C) said that day that (b) (6), (b) (7)(C) did not have any issues with (b) (6), (b) (7)(C). And when I talked to (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) had talked to (b) (6), (b) (7)(C) that same day, (b) (6), (b) (7)(C) took the phone call from (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) – (b) (6), (b) (7)(C) was paging (b) (6), (b) (7)(C) and I called (b) (6), (b) (7)(C) back because I knew (b) (6), (b) (7)(C) was off and I was covering on desulf.

(b) (6), (b) (7)(C) – so I called (b) (6), (b) (7)(C) back and (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) was having problems with (b) (6), (b) (7)(C) with the batch sheets. Where (b) (6), (b) (7)(C) was telling (b) (6), (b) (7)(C) to do it one way and the batch sheet said to do it at a different temp and (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) to quit playin games. And (b) (6), (b) (7)(C) also told me the same thing when I was on my lunch, I remember the quit playing games quote that (b) (6), (b) (7)(C) quoted (b) (6), (b) (7)(C) on distinctly.

(b) (6), (b) (7)(C) – (b) (6), (b) (7)(C) what do you think (b) (6), (b) (7)(C) meant when (b) (6), (b) (7)(C) said "quit playing games"?

(b) (6), (b) (7)(C) – To stop playing games with the temperature. That's when I said, "I'm gonna call (b) (6), (b) (7)(C)." Basically you guys already know even though the batch sheet says this you guys already know that it's 800 degrees. That's when (b) (6), (b) (7)(C) told me "quit playing games."

(b) (6), (b) (7)(C) – I told (b) (6), (b) (7)(C) to follow the batch sheet. That's what the batch sheet says.

(b) (6), (b) (7)(C) – When (b) (6), (b) (7)(C) paged me (b) (6), (b) (7)(C) did say I'm having problems with (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) – Yeah (b) (6), (b) (7)(C) came at me a little bit hard but I didn't feel that I got threatened by (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) – the reason I said I didn't want (b) (6), (b) (7)(C) here is you said that you wanted to talk to me and that (b) (6), (b) (7)(C) wanted to talk to me so I said let's just get it over with because I didn't want to have a bunch of meetings. I didn't want to get involved.

(b) (6), (b) (7)(C) – When I was talking to (b) (6), (b) (7)(C) was making it seem like (b) (6), (b) (7)(C) was throwing me under the bus, that me and (b) (6), (b) (7)(C) got into it and that's why (b) (6), (b) (7)(C) snapped on me.

(b) (6), (b) (7)(C) – That was already the impression that there was already a heated argument between you and (b) (6), (b) (7)(C) already.

(b) (6), (b) (7)(C) – It was an argument but it wasn't where I felt oops I said something wrong or there was something with my job.

(b) (6), (b) (7)(C) – I know you have come to me prior and complain to (b) (6), (b) (7)(C) and when we was talking in there earlier you made it sound like you and (b) (6), (b) (7)(C) don't have no problems. You told me before that (b) (6), (b) (7)(C) had sworn at you.

(b) (6), (b) (7)(C) – Yeah, (b) (6), (b) (7)(C) sworn before to us like, "get the fuck out of the refining room."

(b) (6), (b) (7)(C) – I feel like I'm being intimidated against, I feel like it's going to come back to me and I'm getting thrown under the bus. I ain't trying to lose my job or anything.

(b) (6), (b) (7)(C) – You're not going to lose your job. I just want you to tell me the truth like (b) (6), (b) (7)(C) is always swearing at me, that's what I want you to say. I need for you to tell the truth. Don't lie. Cuz I know you have said that about (b) (6), (b) (7)(C) before.

(b) (6), (b) (7)(C) – And I do not believe what you said in that statement to (b) (6), (b) (7)(C) is true.

(b) (6), (b) (7)(C) – A lot of this contradicts what (b) (6), (b) (7)(C) says to us.

(b) (6), (b) (7)(C) – I already see where you guys stand then. I have nothing else to say.

(b) (6), (b) (7)(C) – Where we stand is that we will represent you the same way we represent (b) (6), (b) (7)(C). That's where we want the truth.

(b) (6), (b) (7)(C) – so you're saying that I made all this stuff up, this and that?

(b) (6), (b) (7)(C) – I want you to tell the truth.

(b) (6), (b) (7)(C) – I did.

(b) (6), (b) (7)(C) – OK, you said you did. Well just remember you gonna have your time too.

(b) (6), (b) (7)(C) – What do you mean by that (b) (6), (b) (7)(C)?

(b) (6), (b) (7)(C) – Because just like (b) (6), (b) (7)(C) sitting here how (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) had the thing or the time when (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) had their problems when (b) (6), (b) (7)(C) felt (b) (6), (b) (7)(C) was trying to get (b) (6), (b) (7)(C) fired, now (b) (6), (b) (7)(C) trying to get (b) (6), (b) (7)(C) fired. That's what this is all about. You two going back and forth. Why don't you step up and try to mend this thing?

(b) (6), (b) (7)(C) – I don't got nothing with (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) – When you talked to me you said this all started with that pipe getting froze up.

(b) (6), (b) (7)(C) – so what do you guys want me to say then?

(b) (6), (b) (7)(C) – The truth!

(b) (6), (b) (7)(C) – I already told you guys the truth.

(b) (6), (b) (7)(C) – So (b) (6), (b) (7)(C) never swore at you never cursed by you. You never told me that you ever felt threatened by the guy?

(b) (6), (b) (7)(C) – I never felt threatened by (b) (6), (b) (7)(C). I said the white hat went to (b) (6), (b) (7)(C) head. Bu I never said I felt threatened. If I said I did then I would have come and talked to you about it 3-5 years ago.

(b) (6), (b) (7)(C) WAS NOT A  
(b) (6), (b) (7)(C) – (b) (6), (b) (7)(C) said let's get (b) (6), (b) (7)(C) or they're gonna come after us. I took pictures of my phone of all the times (b) (6), (b) (7)(C) called me.

(b) (6), (b) (7)(C) Me and (b) (6), (b) (7)(C) went at it about the caustic niter thing.

(b) (6), (b) (7)(C) – (b) (6), (b) (7)(C) came in here because (b) (6), (b) (7)(C) knew that (b) (6), (b) (7)(C) gave you a hard time. (b) (6), (b) (7)(C) came here to speak up.

(b) (6), (b) (7)(C) – So I need (b) (6), (b) (7)(C) to speak up? I don't need (b) (6), (b) (7)(C) to speak up. Telling me to cry as if I won a golden globe and stuff. Telling me that I've been in a (b) (6), (b) (7)(C) and stuff. So basically you want me to say I feel threatened by (b) (6), (b) (7)(C) I feel threatened by (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) – You have come in and said, "I think this (b) (6), (b) (7)(C) gonna try to get me fired. I think this (b) (6), (b) (7)(C) out for me." When you come in and say this, this doesn't add up.

(b) (6), (b) (7)(C) – What guy?

(b) (6), (b) (7)(C) – You said that to me about (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) – have you come to me and told me you think (b) (6), (b) (7)(C) is out to get you fired?

(b) (6), (b) (7)(C) – on a bad day yeah (b) (6), (b) (7)(C) has come to me and apologized said man I'm sorry and that's it.

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(b) (6), (b) (7)(C)

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(b) (6), (b) (7)(C)

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(b) (6), (b) (7)(C)

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(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) 2015

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) office

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) were in the time clock area when the incident took place between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C).

(b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) heard then (b) (6), (b) (7)(C) said that (b) (6), (b) (7)(C) was going to go to HR and (b) (6), (b) (7)(C) also heard (b) (6), (b) (7)(C) ask for (b) (6), (b) (7)(C) union steward

(b) (6), (b) (7)(C) said about 10 AM (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had a problem with (b) (6), (b) (7)(C) and it happened by the time clock

(b) (6), (b) (7)(C) 2015

same day

(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) office

(b) (6), (b) (7)(C) was in the time clock area doing the time of the incident between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) said

(b) (6), (b) (7)(C) was very loud and (b) (6), (b) (7)(C) could not hear anything that (b) (6), (b) (7)(C) was saying

(b) (6), (b) (7)(C) said that that (b) (6), (b) (7)(C) said after what you did yesterday

(b) (6), (b) (7)(C) said then (b) (6), (b) (7)(C) started to walk away and (b) (6), (b) (7)(C) heard someone say are you threatening me are you threatening me but (b) (6), (b) (7)(C) could not say who said it but (b) (6), (b) (7)(C) said that (b) (6), (b) (7)(C) was the loudest one

(b) (6), (b) (7)(C) said that they both seems to be upset that they were not very close to each other wind (b) (6), (b) (7)(C) walked away they were not in arms reach.

(b) (6), (b) (7)(C) 2015

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

I (b) (6), (b) (7)(C) was in the room when (b) (6), (b) (7)(C) was taken statement from (b) (6), (b) (7)(C).

And (b) (6), (b) (7)(C) written statement as I read over it thoroughly I discovered that (b) (6), (b) (7)(C) did not put in the statement that (b) (6), (b) (7)(C) took from (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) made threats to (b) (6), (b) (7)(C) saying that (b) (6), (b) (7)(C) would be working at Wal-Mart (b) (6), (b) (7)(C) actually statement was that (b) (6), (b) (7)(C) said that (b) (6), (b) (7)(C) would be working at Wal-Mart are breaking bread.

(b) (6), (b) (7)(C) acts did we know what breaking bread mean both of us at that time said no.

Doing ~~more~~ farther investigation talking to guys in the plant I found out that breaking bread mean that you will be selling drugs on the street.

by talking with other employees (b) (6), (b) (7)(C) has used this threat towards them also

and they were afraid to do something about it because of losing their job because (b) (6), (b) (7)(C) has told them that they cannot when against us which meaning the company

I ask these employees if I can put their name on this statement and they were afraid to do so that they may lose their job just like (b) (6), (b) (7)(C)



(b) (6), (b) (7)(C) 2015

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

I talked to employee

(b) (6), (b) (7)(C) was in the time clock area doing the time of the incident between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) says (b) (6), (b) (7)(C) was just coming off break and was getting (b) (6), (b) (7)(C) respirator and (b) (6), (b) (7)(C) was talking to (b) (6), (b) (7)(C) but it seemed like (b) (6), (b) (7)(C) was trying to stand back around the corner so the cameras could not see (b) (6), (b) (7)(C) said that (b) (6), (b) (7)(C) heard (b) (6), (b) (7)(C) till (b) (6), (b) (7)(C) yes you know where I will be at you know where I will be and (b) (6), (b) (7)(C) was standing back so the cameras cannot see (b) (6), (b) (7)(C).

And (b) (6), (b) (7)(C) was making all kinds of gestures but the cameras cannot see (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) new where to stand so the cameras could not see (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) says (b) (6), (b) (7)(C) heard (b) (6), (b) (7)(C) call (b) (6), (b) (7)(C) a fake as mother fucker while (b) (6), (b) (7)(C) was standing around the corner so the camera cannot see (b) (6), (b) (7)(C)



# TEAMSTERS LOCAL UNION NO. 120 GRIEVANCE FORM



Number: (b) (6), (b) (7)(C)

## GRIEVANT INFORMATION

First Name: (b) (6), (b) (7)(C) Last Name: (b) (6), (b) (7)(C) Phone: (b) (6), (b) (7)(C)  
Address: (b) (6), (b) (7)(C) City: (b) (6), (b) (7)(C) State: (b) (6), (b) (7)(C) Zip: (b) (6), (b) (7)(C)

## COMPANY INFORMATION

Company Name Gopher Resource, LLC Contact: (b) (6), (b) (7)(C)  
Address: 685 Yankee Doodle Road City: Eagan State: MN Zip 55121  
Fax: (651) 405-6425 Steward Name: (b) (6), (b) (7)(C) Date Filed: (b) (6), (b) (7)(C) 2015

## COMPLAINT DETAIL

The Company violated the contract when I was terminated on (b) (6), (b) (7)(C) 15. Violation of Article 7 of the CBA and any/all other applicable articles and/or pertinent information. Requesting immediate reinstatement with all back pay, seniority, and all other contractual benefits. More evidence to be provided at time of hearing.

(b) (6), (b) (7)(C)

Member's Signature: (b) (6), (b) (7)(C) ☒ Signature on file(when checked)

## DISPOSITION MADE

Complaint Taken By: office (b) (6), (b) (7)(C) Date: (b) (6), (b) (7)(C) 2015  
Agent Name (b) (6), (b) (7)(C) Date: (b) (6), (b) (7)(C) 2015

**AGREEMENT**

between

**GOPHER RESOURCE**

and

**TEAMSTERS LOCAL 120**

Affiliated with the  
**International Brotherhood of Teamsters**

**December 1, 2014 through November 30, 2017**



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#### **PROGRESS CHECKS AND CONTINUATION IN THE PROGRAM**

Maintenance management will conduct a quarterly review (third, sixth, ninth, twelfth month) and a final apprenticeship review at 18 months to check progress of apprentice. During the eighteen (18) months the apprentice must be working toward and have level I Maintenance complete as the eighteen (18) months comes to closure. Feedback will be sought from maintenance employees that are working most closely with the apprentice to assess level of aptitude within the program throughout the eighteen (18) months. In the event that the apprentice is not meeting expectations within the program he/she may be removed from the position at any point in the first eighteen (18) months and placed back into production in an available position.

"Note: Any leaves (FMLA, short-term or long-term disability, leave of absence, etc.) during the 18 months will be reviewed and discussed between the Company and Union to determine if an extension of the 18 month program is applicable.

#### **IF NOT ACCEPTED TO PROGRAM**

If the event that an employee is not selected for the program he/she will be given feedback regarding course work, attendance, ability to work with others, etc., in an effort to assist the employee in getting him/herself in a good place to be considered again when there are future openings should he/she continue to be interested.

#### **SKILLED POSITION VACANCIES**

Higher-level positions within the maintenance department require higher-level skills and these requirements must be met to fill the position(s). Consideration for higher-level position(s) is based on skill. An apprentice and/or other level position already held within the department will not automatically be moved into the "open" position. Depending on experience within the department and level of the position available, Gopher Resource Company may go outside of the Company to hire for the open position.



## MAINTENANCE APPRENTICESHIP PROGRAM

### MAINTENANCE PROGRAM

When entry-level positions become available within the department, the Company will give first consideration to internal candidates. To protect the maintenance employee and others, minimum requirements must be met before a candidate can be admitted to the program.

### REQUIREMENTS FOR ADMISSION

- 1) High school diploma/GED is required to be admitted
- 2) Mechanical and mathematical aptitude by passing written test with a 70% passing score
- 3) Agreement to continue maintenance education in necessary program areas
- 4) Six (6) months continuous experience in Gopher Resource Company production (or equivalent outside experience)
- 5) Attendance must be at no more than six (6) occurrences at time of admittance to program
- 6) Interview with Maintenance Management based on the criteria listed under "acceptance into the program"
- 7) Candidates who do not pass the mechanical and mathematical aptitude tests will not be allowed to retake the tests until they have demonstrated the initiative to obtain outside experience (i.e.: maintenance classes)

*Note: Mobile Equipment Mechanic, in addition to the above, must also have completed training in basic fluid power and basic D.C. electrical class before he/she can apply.*

### ACCEPTANCE INTO THE PROGRAM

Maintenance management selects candidates based upon the admission requirements and interview items listed below. Maintenance management will check-in with employees, lead people, and supervisors that have worked with the candidate(s) to get a clear picture of the candidate.

- Ability to work independently as well as with a team, without continued supervision
- Demonstrates eagerness and willingness for new instruction and continued education
- Listens to constructive feedback from upper levels including senior craftsman
- Work experience and past performance
- Communication skills – ability to comprehend as well as convey maintenance information in a professional manner
- Disciplinary warning slips in effect at time of interview will be taken into consideration

## WORKING AGREEMENT

This Agreement made and entered into by and between GOPHER RESOURCE (hereinafter referred to as the "Employer") and TEAMSTERS LOCAL UNION NO. 120, affiliated with the International Brotherhood of Teamsters, (hereinafter referred to as the "Union"), shall be binding upon the parties as hereinafter provided.

### ARTICLE 1 - UNION SHOP AND DUES

Section 1. The Employer recognizes and acknowledges that the Local Union is the exclusive representative of all employees in the classification of work covered by this Agreement for the purposes of collective bargaining as provided by the National Labor Relations Act.

Section 2. All present employees who are members of the Union on the effective date of this Agreement, or on the date of execution of the Agreement, whichever is later, shall remain members of the Union in good standing as a condition of employment. All present employees who are not members of the Union and all employees who are hired thereafter shall become and remain members in good standing of the Union as a condition of employment on and after the 31<sup>st</sup> day following the beginning of their employment, or on and after the 31<sup>st</sup> day following the effective date of this Agreement, whichever is later.

Section 3. A newly hired employee or a former employee who is rehired shall be a probationary employee for his/her first ninety (90) full working days of employment. During the ninety (90) full working day period, employee must perform normal plant duties at full capacity. A maintenance employee shall be a probationary employee for his/her first one hundred and twenty (120) full working days of employment.

If the employee is terminated at any time during this probationary period, such termination shall not be considered as a subject of a grievance nor become the subject of a dispute with the union.

Section 4. The Employer will deduct Union dues and initiation fees from those employees who have signed legal authorization cards, authorizing such deduction and the Employer will remit such deducted Union dues and initiation fees promptly to the Union after receiving a statement of amounts owing from the Union.

The Employer will not be held responsible for the accuracy of the Union's statement of deductions nor is the Employer to be held responsible for any employee concerns arising from mistakes concerning money taken from the employee paycheck based on the statement deductions provided by the union.

Section 5. D.R.I.V.E.: The Employer agrees to deduct from the paycheck of all employees covered by this Agreement voluntary contributions to D.R.I.V.E. D.R.I.V.E. shall notify the Employer of the amounts designated by each contributing employee that are to be deducted from his/her paycheck on a weekly basis for all weeks worked. The phrase "weeks worked" excludes any week other than a week in which the employee earned a wage. The Employer shall transmit to D.R.I.V.E. National Headquarters on a monthly basis in one check the total amount deducted along with

the name of each employee on whose behalf a deduction is made, the employee's social security number, and the amount deducted from the employee's paycheck.

## **ARTICLE 2 - JOB STEWARD**

The Employer recognizes the right of the Union to designate a Job Steward to handle such Union business as may from time to time be delegated to the Job Steward by the Union Executive Board, and which will not interfere with his/her duties as an employee.

## **ARTICLE 3 - ABSENCE**

**Section 1. TIME OFF FOR UNION ACTIVITIES:** The Employer agrees to grant the necessary and reasonable time off without discrimination or loss of seniority rights and without pay, to any employee designated by the Union to attend a labor convention or serve in any capacity on other official Union business. The Union Agrees that in making its request for time off for Union activities, due consideration shall be given to the number of employees affected in order that there shall be no disruption of the Employer's operations due to lack of available employees.

All time off for Union business will require no less than a 24-hour notice and will be considered a full day unless specially identified by the Union and agreed to by the Company. If the Union's request for time off is offered on a Saturday, Sunday, and/or contractual holiday, the employee will notify his/her supervisor/manager in addition to the notification being processed through Human Resources per usual.

**Section 2. LEAVE OF ABSENCE:** Any employee desiring a leave of absence from his/her employment shall secure written permission from both the Union and the Employer. The maximum leave of absence shall be thirty (30) days and may be extended for like periods. Permission for same must be secured from both the Union and the Employer. During the period of absence, the employee shall not engage in gainful employment. Failure to comply with this provision shall result in the complete loss of seniority rights for the employees involved. The Union and the Company will discuss leave of absence requests when there is a discrepancy of approval.

## **LETTER OF AGREEMENT**

between

**GOPHER RESOURCE**

and

**TEAMSTERS LOCAL NO. 120**

Maintenance employees are responsible for the routine, recurring work required to keep the production plant in such condition that it may be continuously used for its intended purpose. In the event that the subcontractors are performing routine work that employees at the Company are qualified to perform then the Company must offer overtime work to Gopher Resource Company employees.

AGREED TO THIS 21st DAY OF JANUARY, 2015

**GOPHER RESOURCE COMPANY**

**TEAMSTERS LOCAL NO. 120**

By: Catherine Ambo

By: Chris Riley BA 120



#### ARTICLE 25 - TERMINATION CLAUSE

Obligations of Local Union and Officers: The Union, its officers, agents, members, and employees covered by this Agreement agree that they will immediately take and continue to take all reasonable steps to restore the facility to full operations.

This Agreement shall be in full force and effect from December 1, 2014 and including November 30, 2017, and shall continue in full force and effect from year to year thereafter unless written notice of desire to cancel or terminate the agreement is served by either party upon the other at least sixty (60) days prior to date of expiration.

During the term of this Agreement or any renewal or extension, there shall be no strike, slowdowns, or lockouts over any matter, which is subject to the grievance procedure. Any employee who participates in such strike or slowdown shall be subject to disciplinary action, including discharge.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 21st day of January, 2015.

#### GOPHER RESOURCE

By: Catherine Anisko

Title: HR Generalist

By: Nick DePa

Title: Vice President - HR

#### TEAMSTERS LOCAL UNION NO. 120

By: Tom Egan

Title: President

By: Chris Kelly

Title: Business Agent

#### COMMITTEE

(b) (6), (b) (7)(C)  
(b) (6), (b) (7)(C)

#### ARTICLE 4 - SENIORITY

**Section 1.** Seniority is continuous service with the Employer and can be broken only by discharge, voluntary quit, layoff of more than eighteen (18) months, failure to report after recall as specified below, or failure to report at termination of leave of absence or personal injury absence of twenty-four (24) months excluding any employee out due to personal injury prior to the ratification of this contract.

**Section 2.** In all events and for all purposes, it is the responsibility of each employee to maintain current telephone number(s), address, and emergency contact information in the HRIS system.

For the purposes of layoffs and work reduction, there shall be two (2) departments: 1) Production, 2) Maintenance.

- a) In the event of a layoff, the Company will first ask for volunteers (by contacting the employees in person or by telephone) by seniority within the department, and then revert to last person hired within the department as first person laid off within the department, unless the junior employee is either uniquely qualified for the position at issue or critical to plant operations, in which case that employee will be kept in favor of the next most junior employee within the department. In all cases, layoffs and seniority will be determined by department, with the understanding that, for purposes of this Article 4, there shall be two (2) departments, (1) Production and (2) Maintenance.

**Section 3.** When employees are recalled, the employee or employees with the most seniority shall be recalled. An employee or employees so recalled shall be notified by registered letter verified by a delivery receipt delivered to the employee's address. The employee must notify the Employer within three (3) days of their intention to report for work. Failure to so notify shall be equivalent to refusal. The employee must report within one (1) week after receipt of the notice unless a longer time is mutually agreed upon. While waiting for the recalled employee to report, the Employer may use an employee with less seniority.

**Section 4.** Layoff notices will be issued as soon as possible. Usually one weeks' notice will be given except in cases of emergencies or major mechanical or other breakdowns.

**Section 5.** Inability to work because of proven sickness or personal injury shall not result in the loss of seniority rights for employees who have accrued more than one year of seniority. Employees with less than one year of seniority, at the inception of the lost time, shall not gain seniority after thirty (30) consecutive lost days until their first day back to work.

The Employer is under no obligation to provide work to an employee who is unable to perform his/her normal duties because of a sickness or personal injury.

**Section 6.** Seniority list is to be posted in the Plant in three (3) places every thirty (30) days with a copy to the Union.

Section 7. In the event that two (2) or more employees are hired on the same day, seniority shall be determined as follows: Effective December 1, 1989 employee's numbers shall rule.

#### **ARTICLE 5 - MAINTENANCE OF STANDARDS**

Section 1. PROTECTION OF CONDITIONS: The Employer agrees that all conditions of employment relating to wages, hours of work, overtime differentials, and general working conditions shall be maintained at not less than the highest standards in effect at the time of the signing of this Agreement, and the conditions of employment shall be improved wherever specific provisions for improvements are made elsewhere in this Agreement. However, any past gifts, bonuses, or other gratuities shall not be included in the terms "general working conditions."

It is agreed that the provisions of this Section shall not apply to inadvertent or bona fide errors made by the Employer or the Union in applying the terms and conditions of this Agreement if such error is corrected within ninety (90) days from the date of error.

Section 2. EXTRA CONTRACT AGREEMENTS: The Employer agrees not to enter into any agreement or contract with its employees, individually or collectively, which in any way conflicts with the terms and provisions of this Agreement. Any such agreement shall be null and void.

Section 3. MANAGEMENT RIGHTS: Unless specifically provided elsewhere in this agreement, the employer retains all the rights and functions of management that it has by law. As long as the action of the Company does not violate any specific provision of this Agreement, the Company shall have the right, by law, to:

- a) Determine (1) layout and equipment to be used in the business; and (2) the processes, techniques, methods, and means of providing services;
- b) Determine and enforce reasonable rules and regulations, make reasonable changes to such rules and regulations, and enforce such changes.

#### **ARTICLE 6 - GRIEVANCE & METHOD OF SETTLING DISPUTES**

Section 1. Grievances concerning interpretations of the provisions of this Agreement shall be settled as follows:

- FIRST STEP: Between the employee and his/her immediate supervisor. This must be initiated by the employee within five (5) working days, from the day that the facts of the grievance arose or knowledge thereof. If no settlement is reached within two (2) working days, the second step shall be:

Section 2. Safety Equipment and protective clothing will be furnished to the employee and will be replaced on a "trade in basis" at no charge to the employee. This only applies to items returned which need replacement due to normal use.

#### **ARTICLE 22 - FUNERAL LEAVE**

In the event of death in an employee's immediate family, an employee who has twelve months or more of continuous service will be granted leave time with full pay for attending the funeral as follows:

- (a) In event of death of mother, father, spouse, child, stepparents or step child, up to three (3) days, starting with the day of or the day after the death if the days coincide with employee's scheduled work days.
- (b) In event of death of brother, sister, mother-in-law, or father-in-law, for the day of the funeral, if it coincides with one of the employee's scheduled days of work, and if employee attends the funeral.
- (c) In event the funeral for a brother or sister of an employee is held outside of a 100 mile radius of the Twin City Metropolitan Area, the employee shall be granted three (3) days, if it coincides with the employee's scheduled work days and if employee attends the funeral.
- (d) In the event of the death of a grandparent or grandchild of an employee one (1) day, for the day of the funeral, if it coincides with one of the employees scheduled days of work, and if the employee attends the funeral.
- (e) Employees are eligible for up to five (5) days unpaid leave at employee's discretion in all funeral leave cases listed. Employee must notify the Company in advance if he/she would like to utilize the extra day(s).

#### **ARTICLE 23 - NON DISCRIMINATION**

The Employer and the Union agree to continue to follow a policy of non-discrimination on the basis of race, color, religion, national origin, sex and sexual orientation or age, as set forth under Title VII of the Civil Rights Act of 1964.

#### **ARTICLE 24 - JURY DUTY**

The Employer will reimburse an employee who has worked for the Employer for two (2) years or more for the difference between the employee's normal earnings for the time absent because of jury service and the amount received for such jury service, on a showing that the employee has returned to work every day of such period when employee was excused from jury service on or before 12:00 noon, and upon a showing of satisfactory evidence of the amount received for jury service. Reimbursement shall not exceed eighty (80) hours per calendar year.



Employees may only continue with higher level café dollars if they qualify (married/children).

Effective January 1, 2015, there will be no increase in café dollars for the single-level coverage group that is currently at \$7,850.00. Effective January 1, 2016, the Company will increase the café dollars for single-level coverage by \$300.00. Effective January 1, 2017, the Company will increase the café dollars for single-level coverage by \$300.00.

Section 2. The Employer is under no obligation to provide employees health benefits if the employee applies for these benefits outside of the probation period allowed for open enrollment, and the insurance company, due to a health history report, denies the employees application.

Section 3. When an employee is injured on the job and requires medical or hospital care, employee will be taken by someone to receive this care and employee will receive pay for the balance of the shift.

Section 4. The 401(k) plan matching will be up to 4% of the employee's salary. The Employer agrees to deposit both Company Funds and employee contributions on a monthly basis as long as the employee is contributing a total of \$25.00 per month. The Employee contributions will be processed pre-tax through payroll.

Section 5. All employees with more than five (5) five full years of seniority on December 1, 1994 will be credited with two (2) days of severance on December 1, 1994.

An employee shall be credited with their initial two (2) days of severance pay on the December 1st following their fifth anniversary and an additional one (1) day on each subsequent December 1st until they have accumulated six (6) days of severance pay.

Accumulated severance will be paid upon retirement or termination with two (2) weeks' notice, unless the employee has greater than ten (10) years seniority, then accumulated severance pay will be paid at end of employment for any reason.

Severance pay shall be paid at the rate of eight (8) hours per severance day.

#### **ARTICLE 21 - EMPLOYEE SAFETY AND HEALTH**

Section 1. Attendance at safety and training meetings is required. All time will be compensated. The Company will provide a complete calendar with the dates and times of upcoming safety meetings prior to January 1 of each calendar year for the entire year. Calendar is subject to change per business demands; any changes will be noted on the posted calendar as soon as possible. Employer will offer more meetings on lap days in an effort to allow employees to attend safety and training meetings during their regularly scheduled shifts. Section 1 of Article 21 will go into effect March 1, 2013.

**SECOND STEP:** Between the employee, the job steward, and an immediate supervisor and/or a Human Resources representative. If no settlement is reached within three (3) working days, the grievance shall be presented in written form for a meeting, and the third step shall be:

**THIRD STEP:** Between the employee, the job steward, the business agent of the Union, and a Human Resources representative. This third step meeting shall take place within twenty (20) days of the written grievance being filed, unless mutually agreed to extend. If no settlement is reached within five (5) working days, the fourth step shall be:

**FOURTH STEP:** In the event a satisfactory settlement is not reached between the Union and the Employer, the grievance shall be submitted to the Joint Grievance Committee. The Union and Employer signed to this agreement shall each select a representative from their own organization with sufficient authority to objectively represent the parties in pursuit of a resolution to the matter. The Joint Committee decision shall be final and binding on both parties. These meetings will take place at the company. At any time, either party will have the right to skip this step and proceed to arbitration. In the event of a deadlock, then the grievance shall be handled according to the arbitration procedure outlined in this agreement.

Section 2. Should the Union and the Employer members of the Board of Arbitration be unable to agree upon the neutral member within five (5) days, they shall request the Federal Mediation and Conciliation Service to submit a panel of five (5) names from which the neutral members shall be chosen by the process of elimination with the toss of a coin to determine which side strikes off the first name.

Section 3. The Union and the Employer shall pay their own expenses in the settlement of grievances except that the fee for the neutral member of the arbitration panel and any cost to make the hearing a matter of record shall be paid equally by the Union and the Employer.

Section 4. Discharge grievances may be taken immediately to the Third Step. Grievances of this nature must be submitted in writing to the Human Resources Manager within five (5) working days of occurrence.

Section 5. Grievances submitted past the time limits listed in the First Step and in Section 4 will not be considered as valid grievances.



## **ARTICLE 7 - DISCHARGE**

The Employer shall not discharge any employee without just cause, and shall give at least one (1) warning notice of the complaint against such employee, in writing, and a copy of same to the Union, except that no warning notice need be given to an employee before he/she is discharged, if the cause of such discharge is dishonesty, intoxication, chemical impairment or being under the influence of any illegal substance, or recklessness which may result in serious accident while on duty, or major violation of Employer's Rules which do not conflict with the terms of this Agreement.

Warnings shall remain in effect for a period of twelve (12) months. Each new warning, regardless of level, restarts the twelve-month time clock, meaning that that specific warning does not drop off or drop back in level or severity for an entire twelve-month period. Final warnings issued for violation of the drug & alcohol policy shall remain in effect indefinitely.

Discharge must be by written notice to the employee, with a copy to the Union.

## **ARTICLE 8 - PROTECTION OF RIGHTS - PICKET LINE**

Other than as set forth in Article 25 of this Agreement, no employee covered by this agreement can be forced by use of discharge or discipline to cross any lawful picket line.

Section 1. No Lockout. The Employer agrees that so long as this Agreement is in effect there shall be no lockout.

## **ARTICLE 9**

Left blank intentionally.

## **ARTICLE 10 - PHYSICAL EXAMINATIONS**

Section 1. Physical, mental, or other examinations, which are requested by the Employer, shall be promptly complied with by all employees. The Employer shall pay for such examinations. Examinations are defined as all physical exams and consultations that the Employer requires to be taken off the premises.

The employer will reimburse one (1) hour of an employee's time at time and one half (1.5) their straight hourly rate of pay for those employees who take examinations off the premises on their own time.

Section 2. All employees must submit to a blood check every sixty (60) days, with the following exception:

At the discretion of the Health & Safety Manager, employees on MRP status or who maintain a blood lead level within 5 points of the OSHA return to work level shall be tested monthly in their first six months of employment.

vacation policies and procedures. If an employee chooses this option he/she must give notice to Human Resources no less than 48 hours prior to the scheduled holiday.

Section 4. Holidays will be observed on the day they fall on unless stated otherwise in Section 2.

Section 5. Holiday work schedules will be set based upon;

- a) Volunteers - based on seniority and ability to perform necessary work. A blank holiday schedule will be posted a minimum of five (5) days before the holiday.

Employees may sign up for multiple shifts and are eligible by seniority, qualifications, and availability to be scheduled for up to two shifts, on all contractual holidays. Employees are not to work more than 16 hours in a continuous 24 hour period. Employees are subject to attendance expectations per contract and employer policy for any/all scheduled holiday shifts.

- b) If not enough qualified employees volunteer. The Employer will next add employees to the schedule who are normally scheduled for that day of the week and shift, starting with the least senior person and working up, unless specific qualifications are needed.

Lead persons are required to work on holidays, which occur on days they are scheduled for.

If a holiday falls on a lap day and both employees are scheduled for work, the employee with the most seniority has first option of taking the holiday off.

Employees assigned to a recurring schedule of 10 hours will be paid for 10 hours of time on their sick, vacation, birthday, floating holiday, and Company holidays in accordance with the paid time off policies.

## **ARTICLE 20 - HEALTH AND WELFARE**

Section 1. Cafeteria plan of benefits will be provided for all full-time employees after sixty (60) days and first of the month from hire date. All employees will be eligible for health, dental, and short-term disability insurances within the cafeteria plan as well as other options as offered by the Company.

The Company will cover all increases up to 8% sharing equally any increase greater than 8% for employees that meet contractual qualifications for family level café dollars.

Employees that have reached their 5 year anniversary and qualify for family level benefits may bump up to the higher level café dollars. Employees must be qualified at time of enrollment. Qualifying events following open enrollment will not be considered until the next annual open enrollment.



## **ARTICLE 19 - HOLIDAYS**

**Section 1.** All employees who have completed their probationary period and who worked the regularly scheduled work day immediately preceding and the regularly scheduled work day immediately following the below listed holidays shall receive eight (8)/ten (10) hours' pay at the regular straight time hourly rate for said holiday providing they do not work on the holiday.

Employees who are scheduled for a holiday and are absent on the holiday shall forfeit holiday pay. Attendance of the regularly scheduled work day/shift before and after the holiday must be in adherence with the 120 minute/1 point attendance language/policy to qualify the employee for holiday pay. Meaning if an employee incurs 1 point per the absences section of the attendance points system, he/she will forfeit holiday pay unless the employee works on the holiday. If the employee works on the holiday and does not adhere to the 120 min/attendance policy, he/she will only receive holiday pay for the actual hours worked on the holiday.

**Section 2.** The holidays recognized by this Article shall be: New Year's Day, Good Friday, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, or days celebrated as such, along with a Floating Holiday (available January 1 annually following his/her first partial year of employment) and Employee's Birthday, which must be scheduled either 15 days before or after employee's birthday. Upon completion of the introductory period, employee(s) will receive a Floating Holiday.

**Overnight Shift Only** - employees with a regularly scheduled shift of 11p to 7a/ 10p to 6a (ONLY) will recognize the Thanksgiving Holiday starting Thursday night into Friday. Employees that are scheduled to work the Thanksgiving holiday will be paid according to the contract. Employees that are not regularly scheduled 11p to 7a/ 10p to 6a that volunteer to work for the Thanksgiving holiday (11p to 7a/10p to 6a, Thursday into Friday) will be eligible for overtime payment per the contract (not holiday pay). No employee is able to pyramid and/or receive holiday pay for more than the 8/10 hours he/she is eligible for per the contract.

If the overnight shift start and end times change, the Company and Union will revisit the above language in regard to the Thanksgiving holiday.

**Section 3.** Employees who work on any of the above mentioned holidays shall receive time and one half (1 ½) of their regular straight time hourly rate of pay for each hour worked in addition to the eight (8)/ten (10) hours straight time pay for the holiday, with the exception of their Floating Holiday and Birthday and in accordance with Article 19, Section 1.

Employees who work any of the contractual Holidays (not including floating or birthday holiday) will have the ability to exchange their holiday pay (8 or 10 hour regularly scheduled shift) for a vacation day at a future time. The vacation day(s) earned in exchange for holiday pay must be utilized in accordance with all applicable

**Section 3.** If a referral to a personal physician for non-work related personal illness/medical issue is made, the employee is responsible for any expenses associated with the necessary follow-up with their personal physician.

## **ARTICLE 11 - BREAK TIME, WASH UP TIME, PERSONAL APPEARANCE**

### **Section 1.**

- a) Each employee covered by this Agreement whose normally scheduled shift is eight (8) hours, will be entitled to two (2) fifteen (15) minute coffee breaks and one (1) thirty (30) minute lunch break or two (2) thirty-five (35) minute breaks for each full work day. The first break shall be sometime after the first ninety (90) minutes of the work shift and the last break is to be started before the final sixty (60) minutes of the work shift. The break time as shown includes time for break preparation and preparation for return to work (TITO). Employees must punch in and back out for all breaks.
- b) Employees whose normally scheduled shift is ten (10) hours in length will be entitled to two (2) twenty (20) minute coffee breaks and one (1) thirty (30) minute lunch break. All breaks are subject to the same restrictions as shown in Paragraph a.
- c) All coffee breaks shall be paid breaks. Lunch breaks are paid as time for preparation for work and shower/wash-up time.
- d) Employees who work six (6) or less hours of their shift shall be entitled only to their lunch break. This also applies to overtime where employees work six (6) or less hours.
- e) Shifts shall be a minimum of eight (8) hours in length and a maximum of ten (10) hours in length.

**Section 2.** The Employer will supply employees with a jacket similar to what the supervisors now wear and will have these jackets laundered for the employees. If the wearing of any other work clothing is a condition of employment, such clothing will be furnished free of charge by the Employer.

## **ARTICLE 12 - WORKERS COMPENSATION CLAIMS**

The Employer agrees to cooperate toward the prompt settlement of employees on the job injury claims when such claims filed. The employee must report any time off required due to the injury within 24 hours of when employee is notified of such requirement.

## **ARTICLE 13 - MILITARY CLAUSE**

The Employer shall comply with any legal provisions as set forth in USERRA.

#### **ARTICLE 14 - PAY PERIOD**

All regular employees covered by this Agreement shall be paid in full each week. Not more than one weeks' pay shall be held on an employee unless mutually agreed to. Each employee shall be provided with a statement of gross earnings and an itemized statement of all deductions made for any purpose.

#### **ARTICLE 15 - CALL IN TIME**

Section 1. Employees called to work shall be guaranteed four (4) hours pay at the hourly rate specified in this Agreement.

Section 2. Any employee who reports for work, not having been notified not to report, shall be guaranteed four (4) hours pay.

#### **ARTICLE 16 - WAGES AND HOURS**

Section 1. HOURS: The workweek shall start at 12:01 A.M. Monday and end at 12:00 Midnight on Sunday.

The workweek shall be forty (40) hours per week. An employee shall be paid time and one half times (1 ½) their hourly rate for all hours after eight (8) in a day or ten (10) hours in day depending on the employees normally scheduled shift. One and one-half times (1.5) their hourly rate for all hours over 40 worked on a sixth (6<sup>th</sup>) consecutive day, and two times (2X) their normal hourly rate for all hours worked on the seventh (7<sup>th</sup>) consecutive day. There shall be no pyramiding of overtime; meaning that the same hours shall not be counted twice toward overtime.

##### Section 2. WAGES:

| <u>Classifications</u>         | <u>Effective</u> |                 |                 |
|--------------------------------|------------------|-----------------|-----------------|
|                                | <u>12/01/14</u>  | <u>12/01/15</u> | <u>12/01/16</u> |
| Group #1 - General Maintenance | \$23.64          | \$24.35         | \$25.08         |
| Group #2 - Shipping/Receiving  | \$23.64          | \$24.35         | \$25.08         |
| Group #3 - Furnace Operator    | \$23.64          | \$24.35         | \$25.08         |
| Group #4 - Refining Operator   | \$23.64          | \$24.35         | \$25.08         |
| Group #5 - Plant Labor         | \$23.07          | \$23.76         | \$24.47         |
| Group #6 - RMPC                | \$23.64          | \$24.35         | \$25.08         |

The Company will post on the Company intranet the job descriptions with revision dates.

Section 10. Employees are eligible for their first vacation time after January 1st of the calendar year following their hire date. If an employee quits or is discharged within the first calendar year of employment and before January 1st, they shall not be eligible for any vacation eligibility.

Section 11. An employee's first vacation shall be computed as follows: For every month or fraction of a month worked (must be employed at least 10 calendar days of the month) through December 31st of the initial year of hire, the employee will receive 1/2 day vacation with pay but not to exceed 5 total days to be taken in the calendar year following the year of hire.

Section 12. Additional vacation eligibility shall be determined as follows: If an employee works continuously each calendar year after the initial January 1st vacation eligibility date, the employee shall be eligible for 80 hours of vacation with pay January 1st of each calendar year until the beginning of the calendar year in which their 5th year of seniority is reached. January 1st of the 5th seniority year the employee shall be eligible for 120 hours of vacation with pay for every calendar year until January 1st of the employee's 15th seniority year. January 1st of the 15th seniority year the employee shall be eligible for 160 hours of vacation with pay for every year until January 1st of the employee's 25th seniority year. January 1st of the 25th seniority year the employee shall be eligible for 200 hours of vacation with pay. 200 hours is the maximum vacation eligibility available.

Section 13. If an employee terminates employment with the Employer their total eligible vacation time during their entire term of service will be compared against the schedule below. If there are any differences between the amount of vacation taken and the amount of vacation earned (per the following schedule) the difference will be paid to the employee, if owed, or to the Employer, if owed, at the appropriate rate dependent upon their years in service.

| <u>YEARS OF SERVICE</u>  | <u>DAYS EARNED</u> | <u>RATE OF REIMBURSEMENT</u>                          |
|--------------------------|--------------------|---|
| 1 Year of service        | 40 total hours     | 4 or 5 hours per month not to exceed 40 total hours.  |
| 2 Years thru 4 years     | 80 total hours     | 8 or 10 hours per month not to exceed 80 total hours. |
| 5 Years thru 14 years    | 120 total hours    | 12 hours per month not to exceed 120 total hours.     |
| 15 Years thru 24 years   | 160 total hours    | 16 hours per month not to exceed 160 total hours.     |
| 25 Years thru Retirement | 200 total hours    | 20 hours per month not to exceed 200 total hours.     |



Vacation requests submitted February 1 to December 31 will be approved on a first come first serve basis.

Employee must utilize/take the approved paid time off requests (unless mutually agreed to by employee and company otherwise).

Vacation requests submitted by January 15 for vacation dates February 1 to December 31 will be subject to 1) a full week of vacation will take precedence over all other requests. During holiday weeks, a request for 4 vacation days constitutes a full week for those with a 5 day work week regular schedule and 3 vacation days for those with a 4 day work week regular schedule.

Company will permit no less than one (1) employee per department, per shift paid time off should the request adhere to the company time off procedures. Section 3 will go into effect February 15, 2013.

Section 4. Vacation requests must be submitted no less than 48 hours prior to the desired time off unless supervisor agrees to less notice per business needs. Request forms are to be submitted to the Human Resources department for approval unless the request for time off is submitted on a Friday, Saturday, and/or contractual holiday in which case the employee is to submit the request directly to his/her supervisor. In all cases vacation requests must include employees first and last name, desired dates of time off, and the date and time the form was completed. Employees will be granted time off on a first come first serve basis, seniority second (all other information being equal), as staffing and operations permits, and in coordination with section 3.

Section 5. A weeks' vacation with pay shall be based on a regular straight time rate of pay for forty (40) hours. There shall be no reduction in the employee's regular take home pay during approved vacations.

Section 6. Employees must take vacation to receive vacation pay. Effective calendar year 2014, employees may carry over a maximum of eighty (80) hours of vacation time from calendar year to calendar year.

Section 7. Should a holiday occur during an employee's vacation period the employees shall receive an extra days' pay or an extra days' vacation with pay.

Section 8. After each calendar year is completed, the employee must have worked 86.54% of their scheduled hours during the completed calendar year or must have worked 1800 or more scheduled hours during the completed calendar year in order to receive full vacation eligibility for the calendar year completed. Employees who were sick on a reported long-term illness or reported long-term personal injury and do not meet the stated requirements above will be given a prorated vacation based upon the time worked during the calendar year.

Section 9. Vacations must be taken before layoffs will be effective unless the employee has only two weeks or less of vacation left for the year.

Full-time employees will be moved to operator pay following a maximum of 18 months consecutive service unless the employee signs documentation stating he/she does not want the training and/or signs documentation requesting training be slowed down. Employees that have completed necessary operator level training will be held accountable to operator level performance upon receiving operator pay.

LEAD PERSONS, effective December 1, 2003 are to be paid one dollar (\$1.00) more than the rate specified for the job being performed. This will pertain to the fourteen (14) lead person positions listed below. This rate is the minimum for employees with at least one (1) year of seniority. The Employer reserves the right to select lead persons according to its described criteria, and will make said criteria known to the local Union.

GR will post the job description for lead person position on the Company intranet.

|         |                       |                     |
|---------|-----------------------|---------------------|
| Six (6) | Furnace Lead persons  | (one (1) per shift) |
| Six (6) | Refining Lead persons | (one (1) per shift) |
| Two (2) | RMPC Lead persons     |                     |

In the event that an employee has a concern with the technical or interpersonal approach of a lead person he/she should report such concern to a supervisor or human resources representative. GR will work with lead person(s) to remedy such concerns first and foremost through training. The constructive feedback, instructions, and possible disciplinary steps associated with the concern(s) brought forth will be privileged information with the exception of any disciplinary write-ups which are shared with Teamsters Local 120. If the majority of the people that the lead person oversees file complaints with Human Resources in a six (6) month period a sit down meeting with the Company, union steward(s), business agent, and lead person would be conducted at the Company. Lead persons are not subject to this standard in their first year in the lead person role.

STARTING RATE: New employees will start at \$2.00 under scale for 0-4 months and \$1.00 under for 5-12 months of employment.

SHIFT DIFFERENTIAL:

Day Shift – Employees who have the majority (equal to or greater than half) of their normally scheduled hours between 7:00 a.m. and 3:00 p.m.

Afternoon Shift – Employees who have the majority (equal to or greater than half) of their normally scheduled hours between 3:00 p.m. and 11:00 p.m.

Midnight Shift – Employees who have the majority (equal to or greater than half) of their normally scheduled hours between 11:00 p.m. and 7:00 a.m.



As of 12/1/00:

|                  |                                    |
|------------------|------------------------------------|
| Afternoon Shift: | thirty-five cents (\$.35) per hour |
| Midnight Shift:  | fifty cents (\$.50) per hour       |

Section 3. All \*eligible, regular full-time employees who have completed a minimum 1530 hours by October 31 of that year, shall receive a bonus of up to 6% of their earnings for that period. In the event of a long-term illness or long-term personal injury, the minimum hour's requirement will be adjusted to reflect the same.

The Company will use its best effort to pay the bonuses by November 15; if unable, the Company will pay by the first pay period in December of each year.

Employees' bonus payments can be reduced, for each of the following occurrences. Management, at its sole discretion, may waive any percentage reduction.

- 2 percentage points for 6 or more attendance points on his/her record October 31 of current year.
- 3 percentage points for 8 or more attendance points on his/her record October 31 of current year.
- 1 percentage point for each Final Performance Warning/Suspension notice issued to employee between January 1 and October 31 of current year.
- 1 percentage point for refusal to sign safety commitment document.

In no case can the cumulative reductions equal more than 3% points in any one year.

\* To be eligible for the bonus described in Section 3, employee must be on the Company payroll prior to the ratification of this contract (February 15, 2013). Any employees hired after the ratification of this contract are eligible to participate in the bonus program January 1 following his/her five year anniversary at a level of up to 3% of earnings. Each January 1 following, employee's eligibility will increase by 1% up to a maximum eligibility of 6%.

Section 4. COST OF LIVING ALLOWANCE: 3% COLA provisions of this Agreement will not be in effect for the duration on this Agreement.

Section 5. CASUAL OR TEMPORARY EMPLOYEES: No casual or temporary employees will be hired while any of the regular employees are laid off.

Section 6. OVERTIME:

- a) An overtime list for each day of the week can be utilized. Employees may sign up for overtime no less than forty-eight (48) hours in advance. Most senior employee on the electronic overtime application is to be called first for the overtime as stated below. If the signup application is exhausted then calls are made from the master seniority list. If an employee turns

Section 2. ZERO POINTS REWARDS: Employees who accumulate zero points in a given quarter will be eligible to earn one (1) day of vacation (8/10 hours) according to his/her regularly scheduled shift, per quarter, allowing employees the potential to earn up to four (4) days of vacation in a given calendar year. The zero points reward is calculated on a quarterly basis and is applicable only to employees who have three (3) or fewer points on his/her record at the start of a new quarter.

- First Quarter: January to March – zero points = 1 day of vacation earned
- Second Quarter: April to June – zero points = 1 day of vacation earned
- Third Quarter: July to September – zero points = 1 day of vacation earned
- Fourth Quarter: October to December – zero points = 1 day of vacation earned

Employees who accumulate any points in a given quarter will disqualify themselves from being eligible for the zero points reward for that given quarter. Example: January to March – 1 point accumulated = 0 vacation earned. With one (1) point accumulated, the employee is eligible for the zero points reward at the start of the following quarter (April to June). Meaning, if zero points are accumulated April to June, the employee will earn one (1) day of vacation.

Earned vacation time will be posted/made available for utilization no later than the end of the first month following the previous quarter (i.e., January to March, posted and available no later than April 30; April to June, posted and available no later than July 31; July to September, posted and available no later than October 31; October to December, posted and available no later than January 31.) Earned vacation time through the zero point's rewards system is to be utilized in accordance with all applicable vacation policies and procedures. Article 17 will go into effect February 24, 2013.

**ARTICLE 18 - VACATIONS**

Section 1. Vacation period shall be from January 1 to December 31.

Section 2. Employees will be offered an attendance calendar listing any paid time off available beginning January 1 and no later than January 15 annually.

Section 3. Vacation requests submitted January 1 through January 31 will be on a first come first serve basis for time off requests during January 1 to January 31.

Vacation slips for time off requests February 1 to December 31 are to be submitted to the company by Jan 15 of each year. The company will award vacation for February 1 to December 31 by seniority no later than February 1 (when submitted by January 15) for the given calendar year.



An absent point will count with the following *exceptions*:

- Approved day(s) off with pay.
- Obligations to the armed forces. Written documentation must be presented in advance of time off whenever possible.
- Leave under FMLA or other protected leave, must be applied for thirty (30) days in advance if the leave is foreseeable. Medical certification must be completed and returned with fifteen (15) days of the employee's receipt of the FMLA forms, unless the employee has a reasonable excuse for the delay.
- Leave under MN Parental Leave, which is requested no less than one (1) week in advance.

An absent point will occur for each scheduled day an employee is not present, including any overtime the employee agreed to work. One time per year, an employee may seek to have consecutive days absent that do not fall under FMLA or other protected leave count as one (1) occurrence (for up to 10 days) only if all the days missed were due to an illness, a family emergency, or approved in advance by a member of management – medical documentation must be provided as requested by the HR department. Absent occurrences straddling an employee's normal off days will be counted individually except for the reasons listed in the previous sentence.

**½ point will be charged to an employee anytime the following occurs:**

- Employee reports to work two (2) hours/one hundred and twenty (120) minutes or less into the scheduled start of his/her assigned shift and calls the supervisor line (651-405-2280) to report the tardy.
- Employee leaves work any time during the last two (2) hours of his/her assigned shift.

A tardy ½ point will count with the following *exceptions*:

- Partial days due to jury duty. Proper documentation must be presented prior to the day(s) of jury duty.
- Partial days due to worker's compensation injury authorized by an HR or EHS representative.
- Partial days where an employee is expressly excused by a member of management.
- Partial days due to leave under FMLA and/or MN Parental Leave that is authorized in advance.

down overtime on 3 occasions with sixteen (16) hours or more of notice, he/she will be moved to the bottom of the seniority list on the overtime signup list for the remainder of the quarter.

In all cases, the overtime will be given to the most senior, qualified person. In the case where there are no personnel signing the overtime sheet, the supervisor will follow the existing steps for distributing overtime. Employees are not to work more than sixteen (16) hours in a continuous twenty-four (24) hour period.

If the overtime is known about at least two (2) hours in advance then overtime is offered to the most senior employee willing to work overtime hours that need to be covered. If the overtime is not known about two (2) hours in advance then the first four (4) hours are offered to the most senior employee on the shift before the needed overtime and the second four (4) hours would be offered to the most senior employee electing to work four (4) hours.

Management will make every reasonable effort to contact employees for overtime. Overtime will be distributed on a first contact basis.

In all above cases employees must be capable and qualified to perform the work available.

In all events and for all purposes, it is the responsibility of each employee to maintain current telephone number(s) and address information with the Human Resource department.

Employees who do not want to be called for overtime must sign a waiver with the Human Resources department. The waiver may be withdrawn by the employee at any time.

**OVERTIME KNOWN ABOUT MORE THAN 2 HOURS IN ADVANCE**

If the supervisor needs 8 hours overtime and knows about the overtime need 2 hours or more in advance, he will go to the most senior employee that has elected to work 8 hours of OT.

Employee must be ready, available, qualified, and willing to work the full 8 hours. If an employee has a conflict with his/her regularly scheduled shift and the timing of the 8 hours of OT then he/she is not ready and available to work the full 8 hours of OT (example, there is an overlap of the regular shift and the 8 hours of OT) which would require the supervisor to go to the next senior employee.

If the supervisor needs 4 hours overtime and knows about the overtime need 2 hours or more in advance, he/she will go to the most senior employee that has elected to work 4 hours of OT.

Employee must be ready, available, qualified, and willing to work the full 4 hours. If an Employee has a conflict with his/her regularly scheduled shift and the timing of the 4 hours of OT then he/she is not ready and available to work the full 4 hours of OT (example: there is an overlap of the regular shift and the 4 hours of OT) which would require the supervisor to go to the next most senior employee.

#### **OVERTIME KNOWN ABOUT LESS THAN 2 HOURS IN ADVANCE**

If the supervisor needs overtime and knows about the overtime need less than 2 hours or more in advance, he will 1) go to the most senior employee on the signup sheet and on shift before the needed OT and then; 2) go to the most senior employee electing to work 4 hours on the signup sheet for the final 4 hours regardless of if they are off for the day as long as the employee is ready, available, qualified, and willing to work (If applicable - meaning there is a need for an additional 4 hours.)

#### **AGREEMENT TO WORK OVERTIME**

If an employee agrees to work overtime and then does not show up for the work agreed to or does not call more than two hours (120 minutes) prior to the start of the overtime scheduled, the employee will be charged with an absence and a no call occurrence.

#### **EMPLOYEE(S) ARE NOT TO WORK MORE THAN 16 HOURS IN A CONTINUOUS 24-HOUR PERIOD**

Employees are responsible for tracking their hours of work on a daily basis. Employees who violate this contractual agreement will be subject to the following disciplinary steps:

##### **Moderate Infraction**

Infraction of the following rule may result in:

- |                 |   |
|-----------------|---|
| First Offense:  | Verbal Warning will be issued in writing                                    |
| Second Offense: | Written Warning #1  |
| Third Offense:  | Written Warning #2 and up to three (3) day suspension                       |
| Fourth Offense: | Written Warning #3<br>This warning will result in termination of employment |

All moderate infraction warnings will be placed in the employee's personnel file, a copy given to the employee, and a copy sent to the Union. Moderate infraction warnings will remain in effect for a period of one (1) year from date of issue.

Supervisor line (651-405-2231). Employees must call in each day he/she will be absent, unless prearranged with a direct supervisor, manager, or the Human Resources department.

In the event that an employee is going to be tardy, the employee is to call the supervisor line (651-405-2280) by the start of his/her assigned shift. Maintenance employees must call the Maintenance Supervisor line (651-405-2231). Employees must call in each day he/she will be tardy, unless prearranged with a direct supervisor, manager, or the Human Resources department. If an employee does not call the supervisor line to report a tardy by the start of his/her assigned shift and shows up to work more than fifteen (15) minutes late, and the supervisor has backfilled the position with overtime agreed to by another employee, the supervisor has the option to send the employee home without pay.

#### **2 points will be charged to an employee anytime the following occurs:**

- Employee does not call the supervisor line to report an absence.
- Employee calls the supervisor line to report an absence two (2) hours/one hundred and twenty (120) minutes after the start of his/her shift.

#### **1 point will be charged to an employee anytime the following occurs:**

- Employee calls the supervisor line to report an absence and/or does not report to work for a scheduled work shift.
- Employee reports to work in excess of two (2) hours/one hundred and twenty (120) minutes past the scheduled start of his/her assigned shift without prior approval. Employee may go to work up to three (3) hours past his/her scheduled start time even though an absence (1 point) has been charged against them. It will be to the discretion of the supervisor/manager based upon the needs of the business to determine if an employee is to begin work when/if employee arrives in excess of three (3) hours past the start of his/her scheduled shift.
- Employee reports to work after the start of his/her assigned shift and does not call the supervisor line (651-405-2280 or 651-405-2231) to report the tardy prior to the start of his/her assigned shift.
- Employee leaves work earlier than the last two (2) hours of his/her scheduled shift without prior approval from his/her direct supervisor/manager.
- Employee misses more than two (2) hours of his/her scheduled shift (example: arriving late, excessive breaks, leaving early) without prior approval.

*\*Note – Regularly scheduled shift is to include overtime shifts that have been agreed to in advance.*



## ARTICLE 17 - ATTENDANCE POINTS SYSTEM

Section 1. The primary intention of the accumulative attendance points system is to provide written guidelines within which an employee can miss a scheduled work day, for a personal illness or family emergency without the worry of losing employment. The attendance points system is not intended to provide days off to employees who decide, for whatever reason, not to come to work for a day or longer.

- 1 point will be issued for an unexcused absence
- ½ point will be issued for an unexcused tardy
- 2 points will be issued if an employee fails to notify his/her supervisor of an absence

Employees are not to accumulate nine (9) or more points in a continuous twelve (12) month period. Under this rule, points accumulated for each absent occurrence, tardy occurrence, and/or no call occurrence will be eliminated from the employee's record twelve (12) months after it occurs.

Half (½) points given for being tardy will be eliminated from an employee's record after six (6) months anytime the following occurs:

- Employee is late less than two (2) hours into the start of his/her shift and calls the supervisor line prior to the start of shift

Half (½) points will be eliminated from an employee's record after twelve (12) months anytime the following occurs:

- Employee leaves work any time during the last two (2) hours of his/her assigned shift.
- Employee reports to work after the start of his/her assigned shift and does not call the supervisor line (651-405-2280) to report the tardy prior to the start of his/her assigned shift.

*\*Note – this instance will result in one (1) absent point.*

### WARNING AND DISCIPLINARY STEPS

|                              |   |
|------------------------------|---|
| <b>Verbal Warning</b>        | Will be issued in writing at 4 unexcused points |
| <b>Written Warning</b>       | Will be issued in writing at 6 unexcused points |
| <b>Final Written Warning</b> | Will be issued in writing at 8 unexcused points |
| <b>Termination</b>           | Will be issued in writing at 9 unexcused points |

Employees are required to call in prior to the start of his/her assigned shift to report an absence. In the event that an employee is going to be absent, the employee is to call the supervisor line (651-405-2280) at least sixty (60) minutes prior to the start of his/her assigned shift. Maintenance employees must call the Maintenance

## MANDATORY OVERTIME

In the event no one volunteers for overtime and time does not permit the calling in of off duty employees, the Employer will assign mandatory overtime by reverse shift seniority starting with the person with the least seniority. The Employer will give a minimum of one (1) hour notice for mandatory overtime.

If a sixth (6<sup>th</sup>) day is necessary, for one shift or all shifts, and is known about more than five (5) days in advance, the Employer shall schedule employees for the sixth (6<sup>th</sup>) day by:

- a) Posting a blank schedule for employees to volunteer. Seniority and ability to perform the work will rule if there are too many volunteers.
- b) If there are not enough volunteers 72 hours prior to the day being scheduled; the least senior qualified employees on the required shift/shifts shall be required to work the overtime.
- c) Employees working on a sixth (6<sup>th</sup>) day shall be paid time and one half (1 ½) for all hours worked only after they complete forty (40) hours of work within that work week.

No employee will be required to perform more than four (4) hours of mandatory overtime in each pay period with a maximum of eight (8) hours in a four (4) week period. Each employee will be granted one (1) excused mandatory overtime in each four (4) week period.

Section 7. TEMPORARY ASSIGNMENTS, ASSIGNMENT CHANGES: An employee assigned to a new job shall receive training until the Employer accepts the employee as qualified to do the job for a maximum of twelve (12) months.

When an employee signs a temporary posting and is assigned to such job, he/she will be notified and offered a retreat option to his/her previously held position prior to the Company posting his/her previously held position to be filled by another.

If the Company is informed in writing via a medical physician that an employee will be absent for sixty (60) days or more, a temporary posting will be hung for the employee's position. Effective for any/all applicable following date of ratification, February 15, 2013.

Following 60 days from assignment, temporary positions will be posted for bid.

When an employee is required to work temporarily in a lower paid classification, the employee shall not receive a cut in wages for those hours worked.

When an employee is required to work temporarily in a higher paid classification, the employee shall receive the wage rate established for that classification for the period such work is performed.



When movement from an employee's assigned department is required to support another department the senior qualified employee will have first choice to move. If the employee chooses not to move the junior qualified employee must move.

**Section 8. SHIFT CHANGE - DAYS OFF:** Employees normally shall receive two (2) consecutive days off, except in a work week where a shift change takes place or where an employee initiates a shift change. Days off for employee who fills in for employee granted a day change shall be at the Employer's discretion and the Employer will not be required to pay time and one half or double time to the employee who covers the granted day change.

**Section 9. BIDDING:** When a regular vacancy occurs within a job classification, the Employer will post the opening for bid for a period of seven (7) days and the successful bidder will be assigned to fill the opening within fifteen (15) calendar days. The successful bidder assigned to fill the opening can, within the first ten (10) calendar days of starting at the position or shift, retreat from the position to his/her original position, and the Employer will accommodate this request within fifteen (15) calendar days. Employees may accept and/or retreat no more than two (2) times in a continuous twelve (12) month period. If two (2) or more employees apply for the position, consideration will be given to their classifications and length of service. If qualifications are substantially equal, preference will be given to the employee having the greater seniority.

After posting a position, the Employer need not post the same position for forty-five (45) days from the date the posting was removed.

If the Company eliminates a job, no less than a thirty (30) day notice will be provided to the employee(s) impacted.

The Employer agrees in principle that successful bidders, with more than five (5) years' seniority, can pick their days off after three (3) months from the date they start a new job, provided it is practical or possible without impairing the efficiency of the work or the operation of the facility and the person they are replacing has a minimum of one (1) year seniority in the same job classification.

**Section 10.** When a part-time opening at The Recycling Zone becomes available, a notice will be put up in the scheduling room. Interested applicants should contact the Human Resources department. Successful candidate is not permitted to work at multiple Company sites in full- and part-time positions, retreat from position to previously held position, and/or bid for positions at other sites of the Company.

**Section 11. ROTATION OF JOBS:** Rotate qualified employees a minimum of every four hours in the refining casting and furnace operator/laborer positions excluding kettle operator/laborer, blast, and reverb chargers. Upon request, qualified employees in excluded position(s) will be placed in rotation as production permits.

Employees in bidded positions within RMPC and Shipping/Receiving can, by seniority, select the assignment within his/her bidded department. Within a time period of two (2) calendar months, up to seven days will be utilized for rotation.

Employees will be held to the same level of accountability to his/her performance regardless of if the employee is in his/her selected assignment and/or during rotation.

For purposes of overtime and in the event a business need prevails, the Company has discretion in designating assignments for both RMPC and Shipping/Receiving.

**Section 12.** The supervisor will only do work when there is an employee who does not show up for work on scheduled shift time and only until a replacement has reported for work. Plant supervisors are not included in the Union.

**Section 13 - SICK DAYS:** An employee shall be credited with one (1) day of sick pay on his/her second (2<sup>nd</sup>) anniversary date. Following an employee's second (2<sup>nd</sup>) anniversary, he/she shall be credited with one (1) day of sick pay on January 1<sup>st</sup> and one (1) day of sick pay on April 1<sup>st</sup>. Each subsequent anniversary date, January 1<sup>st</sup>, and April 1<sup>st</sup>, an employee will be credited with his/her sick days.

Accumulated sick pay will be paid upon retirement or termination with two (2) weeks' notice, unless the employee has greater than ten (10) years seniority, then accumulated sick pay will be paid at end of employment for any reason.

Employees must call in a minimum of sixty (60) minutes before the start of their shift to report a sick day.

Employees shall be able to accumulate up to three hundred (300) hours of sick pay during their employment.

Sick pay shall be paid at the rate of eight (8) hours per sick day. Employees assigned to a regular schedule of ten (10) hours will be paid at the rate of ten (10) hours per sick day.

One time per calendar year, an employee may utilize one (1) of his/her available sick days by calling in up to thirty (30) minutes prior to the start of his/her shift and requesting the sick day.

**Section 14. LONGEVITY PAY:** Employees reaching their fifth anniversary date after December 1, 1995 shall receive a five cent (\$.05) raise on their fifth anniversary, another five cent (\$.05) raise on their sixth anniversary date, and a final five cent (\$.05) raise on their seventh anniversary date.



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 18  
330 2nd Ave S Ste 790  
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April 6, 2015

RICHARD W. PINS, Attorney  
MATTHEW C. TEWS, Attorney  
STINSON LEONARD STREET  
150 S 5 Ste 2300  
Minneapolis, MN 55402-4223

Re: GOPHER RESOURCES  
Case 18-CA-148260

Dear Mr. PINS and Mr. TEWS:

The foregoing letter represents the Region's first formal request for evidence regarding the above-referenced case.

**Allegations:** The allegation for which I am presently seeking your evidence is as follows:

- On or about (b) (6), (b) (7)(C) 2014, Gopher Resources ("Employer") suspended and subsequently terminated employee (b) (6), (b) (7)(C) in retaliation for complaints about (b) (6), (b) (7)(C) supervisor, (b) (6), (b) (7)(C), which in turn constituted protected concerted activity under the National Labor Relations Act.

**Board Affidavits:** I am requesting to take affidavits from (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) and any other individuals you believe have information relevant to the investigation of the above-captioned matter. Please be advised that the failure to present representatives who would appear to have information relevant to the investigation of this matter, for the purposes of my taking sworn statements from them, constitutes less than complete cooperation in the investigation of the charge. Please contact me by **April 10, 2015** to schedule these affidavits.

**Evidence and Position Statement:** In order for me to complete my investigation, please prepare a position statement, along with following evidence:

- Any discipline issued to (b) (6), (b) (7)(C) in the last three years (including, but not limited to, (b) (6), (b) (7)(C) termination).
- Copies of any statements taken by the Employer during the investigation that led to (b) (6), (b) (7)(C) termination.

3. Copies of any video evidence viewed by the Employer during the investigation that led to (b) (6), (b) (7)(C) termination.
4. Any documents related to complaints made by employees about (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (during (b) (6), (b) (7)(C) tenure as a (b) (6), (b) (7)(C).
5. A copy of the Employer's employee handbook. As part of this submission, please indicate any policies relied on in suspending and terminating (b) (6), (b) (7)(C).
6. Copies of all terminations by the Employer since January 1, 2014.
7. Copies of all discipline issued by the Employer for insubordination since January 1, 2012.
8. Copies of all discipline issued by the Employer for safety violations since January 1, 2012.
9. Copies of all discipline issued by the Employer for aggressive behavior since January 1, 2012.

In addition, if you are aware of any other evidence that is relevant to the allegation in this case, please feel free to include that evidence with your submission.

**Date for Submitting Evidence:** To resolve this matter as expeditiously as possible, you must provide your evidence and position in this matter by **April 14, 2015**. If you are willing to allow me to take affidavits, please contact me by **April 10, 2015** to schedule a time to take affidavits. Electronic filing of position statements and documentary evidence through the Agency website is preferred but not required. To file electronically, go to **www.nlrb.gov**, select **E-File Documents**, enter the **I LRB case number**, and follow the detailed instructions. If I have not received all your evidence by the due date or spoken with you and agreed to another date, it will be necessary for me to make my recommendations based upon the information available to me at that time.

Please contact me at your earliest convenience by telephone, (612)348-1784, or e-mail, [tyler.wiese@nlrb.gov](mailto:tyler.wiese@nlrb.gov), so that we can discuss how you would like to provide evidence and I can answer any questions you have with regard to the issues in this matter.

Very truly yours,

/s/ Tyler J. Wiese

TYLER J. WIESE  
Field Attorney



April 7, 2015

*Via PDF email* ([tyler.wiese@nlrb.gov](mailto:tyler.wiese@nlrb.gov))

Tyler Wiese  
Attorney  
National Labor Relations Board  
Region 18

Re: **Gopher Resource, LLC ("Gopher")**  
**Charge No. 18-CA-148260**

Dear Mr. Wiese:

Gopher respectfully requests that the Board defer the above-referenced charge to arbitration.

As a threshold matter, the Board's new pre-arbitral deferral standard, as set forth in *Babcock & Wilcox Construction Co., Inc.*, 361 NLRB No. 132 (December 15, 2014), **does not apply** to the instant charge. As expressly set forth therein, "where current contracts do not authorize arbitrators to decide unfair labor practice issues, we will not apply the new standards until those contracts have expired, or the parties have agreed to present particular statutory issues to the arbitrator." 361 NLRB No. 132 at p. 14. *Babcock & Wilcox*, along with its new standard, was issued on December 15, 2014. The parties' controlling CBA took effect on December 1, 2014, prior to this date (the "CBA"). That CBA, a copy of which is attached, does not "authorize arbitrators to decide unfair labor practice issues." Thus, the new standard will not apply to disputes arising under this contract until it expires and is, in turn, replaced.

There can be no question that the underlying charge should be deferred under the pre-*Babcock & Wilcox* pre-arbitration deferral standard.

## **I. Factual Background**

The Union filed a charge on March 17, 2015, alleging that Gopher discriminated against (b) (6), (b) (7)(C) by suspending and then terminated (b) (6), (b) (7)(C). Subsequently, the allegation appears to have been reformed to claim that the suspension and termination were retaliation for complaints about a supervisor. See April 6, 2015 NLRB Request for Evidence. Either way, the gravamen of the charge is (b) (6), (b) (7)(C)'s suspension and termination.

Of course, Gopher disputes either version of the allegation. It is Gopher's position that it terminated (b) (6), (b) (7)(C)'s employment for cause, consistent with Gopher policies and the terms of the parties' CBA. A copy of the termination letter outlining the reasons for the discharge is available upon

request. Given the plain language of the parties' CBA and its direct applicability to this dispute, however, that does not even seem necessary here.

The parties' CBA specifically states:

The Employer shall not discharge any employee without just cause, and shall give at least one (1) warning notice of the complaint against such employee, in writing, and a copy of same to the Union, except that no warning notice need be given to an employee before he/she is discharged, if the cause for such discharge is dishonesty, intoxication, chemical impairment or being under the influence of any illegal substance, or recklessness which may result in serious accident while on duty, or major violation of Employer's Rules which do not conflict with the terms of this Agreement.

See CBA Art. 7. This contract clause is at the heart of the parties' dispute, and of course, both—the clause and dispute—are subject to a well-healed, long standing grievance and arbitration process.

Article 6 of the CBA outlines that process. It states, in part: "Grievances concerning interpretations of the provisions of this Agreement shall be settled" through a "Step" process culminating in arbitration. It further states that, "Discharge grievances may be taken immediately to the Third Step." See CBA Art. 6, §§ 1 and 4.

In accordance with that process, the Union immediately filed a grievance over the very same suspension and termination that are the subject of the Board charge. That grievance, dated (b) (6), (b) (7)(C) 2015, states:

The Company violated the contract when I was terminated on (b) (6), (b) (7)(C) /15. Violation of Article 7 of the CBA and any/all other applicable articles and/or pertinent information. Requesting reinstatement with all back pay, seniority and all other contractual benefits. More evidence to be provided at time of hearing.

Gopher is processing this charge consistent with the CBA and stands ready to arbitrate the matter as necessary.

## II. The Charge Should be Deferred

The Board should defer the Charge to arbitration in accordance with *Collyer Insulated Wire*, 192 NLRB 837 (1971), as modified by *United Technologies Corp.*, 268 NLRB 557 (1984); see also *Babcock & Wilcox*, 361 NLRB No. 132 (December 14, 2014) (recognizing *Collyer* as the then-existing pre-arbitral deferral standard).

Under *Collyer*, the Board defers to the grievance and arbitration machinery in the parties' CBA where: (1) there exists a stable collective bargaining relationship, (2) the respondent is willing to arbitrate the arbitrable issue, and (3) the contract and its meaning are central to resolution of the charge. See e.g. *Caritas Good Samaritan Medical Center*, 340 NLRB No. 6 (2003). In fact, the Board has explained that "where . . . an employer and union have voluntarily elected to create dispute resolution machinery



culminating in final and binding arbitration, it is contrary to the basic principles of the Act for the Board to jump into the fray prior to an honest attempt by the parties to resolve their disputes through that machinery.” *Tri-Pak Mach.*, 325 NLRB No. 119 (1998). A contract-based dispute should only be resolved by the Board where a respondent refuses to waive procedural bars to arbitration and submit the matter to an arbitrator on its merits. See *United Technologies Corp.*, 268 NLRB 557 (1984). That is not the case here.

As indicated, the facts underlying the grievance and the facts underlying the Charge are the same, and resolution of this dispute requires application and interpretation of the CBA. The Union has represented the bargaining unit for decades, i.e., there is a longstanding and stable collective bargaining relationship between the parties. And Gopher has already engaged in the initial steps of the grievance and arbitration procedure delineated at Article 6 of the CBA, and is prepared to arbitrate the matter as necessary.

### **III. Conclusion**

Based on the language of Grievance and the Charge, it is clear the CBA is central to resolution of the Charge. Therefore, Gopher again respectfully requests that the Charge be deferred to arbitration.

Sincerely,

STINSON LEONARD STREET LLP



Richard Pins

**From:** [Wiese, Tyler](#)  
**To:** ["Pins, Richard"](#)  
**Subject:** RE: Gopher and Local 120  
**Date:** Wednesday, April 15, 2015 2:23:00 PM

---

Rick—I am still waiting to hear back with a final answer from Regional management on the deferral issue. I will keep you updated going forward.

---

**From:** Pins, Richard [mailto:[rick.pins@stinsonleonard.com](mailto:rick.pins@stinsonleonard.com)]  
**Sent:** Wednesday, April 15, 2015 1:06 PM  
**To:** Wiese, Tyler  
**Subject:** RE: Gopher and Local 120

Hi Tyler:

What's the status? Deferral?

Rick

**Richard W. Pins** | Partner | Stinson Leonard Street LLP  
150 South Fifth Street, Suite 2300 | Minneapolis, MN 55402  
T: 612.335.7007 | M: 612.965.1805 | F: 612.335.1657  
[rick.pins@stinsonleonard.com](mailto:rick.pins@stinsonleonard.com) | [www.stinsonleonard.com](http://www.stinsonleonard.com)

(b) (6), (b) (7)(C) [@stinsonleonard.com](#)

---

**From:** Wiese, Tyler [mailto:[Tyler.Wiese@nlrb.gov](mailto:Tyler.Wiese@nlrb.gov)]  
**Sent:** Friday, April 10, 2015 11:09 AM  
**To:** Pins, Richard  
**Subject:** RE: Gopher and Local 120

Rick,

I'm fine with that. We will talk about extensions on the evidence later if I end up needing something from you.

Thanks,

Tyler

---

Tyler Wiese | Attorney  
National Labor Relations Board  
Region 18  
330 Second Ave. South, Ste. 790  
Minneapolis, MN 55401  
T: 612-348-1784 | F: 612-348-1785 | E: [tyler.wiese@nlrb.gov](mailto:tyler.wiese@nlrb.gov)

---

**From:** Pins, Richard [<mailto:rick.pins@stinsonleonard.com>]  
**Sent:** Friday, April 10, 2015 10:32 AM  
**To:** Wiese, Tyler  
**Subject:** RE: Gopher and Local 120

No problem. I'm not going to do anything more on it, however, until I hear further from you.

Rick

**Richard W. Pins** | Partner | Stinson Leonard Street LLP  
150 South Fifth Street, Suite 2300 | Minneapolis, MN 55402  
T: 612.335.7007 | M: 612.965.1805 | F: 612.335.1657  
[rick.pins@stinsonleonard.com](mailto:rick.pins@stinsonleonard.com) | [www.stinsonleonard.com](http://www.stinsonleonard.com)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) [@stinsonleonard.com](mailto:rick.pins@stinsonleonard.com)

---

**From:** Wiese, Tyler [<mailto:Tyler.Wiese@nlrb.gov>]  
**Sent:** Friday, April 10, 2015 10:31 AM  
**To:** Pins, Richard  
**Subject:** RE: Gopher and Local 120

I'm still working on getting evidence from the Union. I apologize for not getting back sooner.

---

**From:** Pins, Richard [<mailto:rick.pins@stinsonleonard.com>]  
**Sent:** Friday, April 10, 2015 10:25 AM  
**To:** Wiese, Tyler  
**Cc:** Tews, Matthew  
**Subject:** Gopher and Local 120

Hi Tyler:

Has a decision been made on deferral? Thanks.

Rick

**Richard W. Pins** | Partner | Stinson Leonard Street LLP  
150 South Fifth Street, Suite 2300 | Minneapolis, MN 55402  
T: 612.335.7007 | M: 612.965.1805 | F: 612.335.1657  
[rick.pins@stinsonleonard.com](mailto:rick.pins@stinsonleonard.com) | [www.stinsonleonard.com](http://www.stinsonleonard.com)

(b) (6), (b) (7)(C)

[@stinsonleonard.com](mailto:rick.pins@stinsonleonard.com)

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April 24, 2015

*Via PDF email* ([tyler.wiese@nrlrb.gov](mailto:tyler.wiese@nrlrb.gov))

Tyler Wiese  
Attorney  
National Labor Relations Board  
Region 18

Re: **Gopher Resource, LLC ("Gopher")**  
**Charge No. 18-CA-148260**

Dear Mr. Wiese:

Gopher submits this additional correspondence in response to the Board's request for Gopher's position statement and further discussion of *Collyer* deferral.

According to the Board's April 6, 2015 Request for Evidence, (b) (6), (b) (7)(C) allegation is now as follows:

On or about (b) (6), (b) (7)(C) 2014, Gopher Resources ("Employer") suspended and subsequently terminated employee (b) (6), (b) (7)(C) in retaliation for complaints about (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) which in turn constituted protected concerted activity under the National Labor Relations Act.

Gopher disputes (b) (6), (b) (7)(C) allegations. Gopher believes, however, that the proper forum for this dispute is not the Board, but rather the bargained-for grievance and arbitration process found within the collective bargaining agreement between Gopher and Teamsters Local 120 (the "CBA"). Thus, as stated in its April 7, 2015 correspondence to the Board, Gopher respectfully requests that the Board defer the above-referenced charge to arbitration.

This correspondence will not unnecessarily repeat what is contained in that April 7, 2015 letter, which is incorporated herein by reference. Instead, this letter will provide a brief statement of Gopher's position on the allegations of the charge, as amended and restated in the Board's April 6, 2015 letter, and further address the interplay between the parties' long-standing collective bargaining agreement and the dispute at hand.

#### **I. Gopher's Position**

(b) (6), (b) (7)(C) apparently now alleges that (b) (6) was suspended and subsequently terminated in retaliation for complaints about (b) (6), (b) (7)(C). This is a departure from the allegations contained within the charge as originally filed, which state that Gopher interfered with, restrained and coerced its employees



by threatening them that claims against the Company will lose, by creating the impression of surveillance and threatening employees "that they could lose their jobs, but management cannot." The charge as originally filed also contained a vague allegation that (b) (6), (b) (7)(C) discriminated against (b) (6), (b) (7)(C) by suspending then terminating (b) (6), (b) (7)(C) and that, since (b) (6), (b) (7)(C) 2014, (b) (6), (b) (7)(C) threatened and discriminated against employees. Nowhere in the original charge did (b) (6), (b) (7)(C) allege that (b) (6), (b) (7)(C) disciplined in retaliation for making a complaint.

Even so—putting aside that the allegation has so obviously been repackaged by (b) (6), (b) (7)(C) since the original filing in a transparent attempt to shoehorn an otherwise unremarkable termination for cause into one that might sound in Section 7 of the Act—(b) (6), (b) (7)(C) was not suspended or subsequently terminated from (b) (6), (b) (7)(C) employment in retaliation for complaints about (b) (6), (b) (7)(C) was terminated for multiple serious infractions of the company's work rules. Indeed, Gopher's termination letter to (b) (6), (b) (7)(C) a copy of which is attached, sets forth precisely why (b) (6), (b) (7)(C) employment was terminated:

On (b) (6), (b) (7)(C) 2015, you were involved in an incident in which you refused to follow the orders of management and engaged in the use of threatening, abusive and/or profane language toward a member of management. During the subsequent investigation, you engaged in threatening, intimidating, and coercive conduct toward another employee and dishonesty both in your statement of the incident and in the effort to persuade another employee to provide dishonest testimony.

In short, (b) (6), (b) (7)(C) was terminated because (b) (6), (b) (7)(C): (a) engaged in serious rule violations, including insubordination and threatening conduct toward management, and then (b) while Gopher was conducting an investigation into the conduct, (b) (6), (b) (7)(C) not only lied about what happened, (b) (6), (b) (7)(C) attempted to persuade another employee to lie on (b) (6), (b) (7)(C) behalf.

It is true that, as part of this process, (b) (6), (b) (7)(C) voiced a complaint about (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), and claimed that (b) (6), (b) (7)(C) threatened (b) (6), (b) (7)(C). The (b) (6), (b) (7)(C) made that complaint or the verity thereof, however, had nothing to do with the decision to suspend or discharge (b) (6), (b) (7)(C)—except to the extent that it was later learned that, as part of the aforementioned investigation, (b) (6), (b) (7)(C) attempted to get another bargaining unit employee to lie about this supervisor in an effort to substantiate (b) (6), (b) (7)(C) position and/or justify (b) (6), (b) (7)(C) actions, which was also a violation of Company rules.

Within Gopher's Plant Rules and Regulations there is a subset of "Serious Infractions," which "may call for immediate termination of employment." Among those Serious Infractions are the following:

Insubordination: (a) A refusal or failure to perform or follow directions or instructions of management unless such assignment would unreasonably endanger life or health of self or others; (b) The use of threatening, abusive, or profane language toward a member of management; (c) Acts of violence or threats toward a member of management or other employees; (d) Threatening, intimidating, coercing, interfering, or fighting with other employee on company premises.

It is based upon (b) (6), (b) (7)(C) violations of these Rules, in combination with the plain language of the CBA, that Gopher terminated (b) (6), (b) (7)(C) employment. Again, that (b) (6), (b) (7)(C) complained about a supervisor had nothing to do with it.

## II. The Collective Bargaining Agreement

These above-referenced Plant Rules are, and have long been, enforced by Gopher in accordance with the CBA, and when their application is in dispute, that application has been policed through the grievance and arbitration process. Indeed, Gopher and the Union regularly arbitrate grievances arising directly out of Gopher's enforcement of the above-quoted Serious Infractions.

It is not just these Plant Rules that are at issue here, however. The parties' CBA also stands at the heart of and is integral to resolution of this dispute.

As a threshold matter, the CBA, at Art. 5, § 3, specifically grants to Gopher the management right to "determine and enforce reasonable rules and regulations, make changes to such rules and regulations, and enforce such changes." As stated, it is these very rules, implemented in accordance with this provision of the CBA, that Gopher is seeking to enforce, also in accordance with this provision.

Of course, that is not where the CBA's application to this matter ends. It is Gopher's position, and for an arbitrator to decide, that (b) (6), (b) (7)(C) suspension and termination were carried out in strict accordance with **Article 7** of the CBA, which provides:

The Employer shall not discharge any employee without *just cause*, and shall give at least one (1) warning notice of the complaint against such employee, in writing, and a copy of same to the Union, except that *no warning notice need be given to an employee before he/she is discharged*, if the cause for such discharge is *dishonesty*, intoxication, chemical impairment or being under the influence of any illegal substance, or recklessness which may result in serious accident while on duty, *or major violation of Employer's Rules* which do not conflict with the terms of this Agreement.

See CBA Art. 7. More specifically, it is and will Gopher's position at the arbitration that "no warning notice needed be given" (b) (6), (b) (7)(C), because (b) (6), (b) (7)(C) was discharged for **dishonesty** and a **major violation of Employer's Rules**.

To be sure, neither (b) (6), (b) (7)(C) nor the Union could or would dispute the significance of Article 7 of the CBA to this matter or in the dispute resolution process. Indeed, the grievance at issue, which arises out of the exact same set of facts, states:

The Company violated the contract when I was terminated on (b) (6), (b) (7)(C)/15. Violation of **Article 7** of the CBA and any/all other applicable articles and/or pertinent information. Requesting reinstatement with all back pay, seniority and all other contractual benefits. More evidence to be provided at time of hearing.



### III. Conclusion

There is no merit to the newly-contrived charge at issue. It is nothing more than a garden-variety discipline/discharge grievance masquerading, after the fact, as an unfair labor practice. Absent outright dismissal by the Board, however, it should be deferred in accordance with *Collyer*.

The parties have a long-standing collective bargaining relationship. Gopher has not exhibited, nor has the Union even suggested that Gopher has enmity toward its employees' exercise of protected rights. Gopher is willing to arbitrate the dispute—in fact, the parties are presently in the process of striking arbitrators—and Article 6 of the parties' CBA (outlined in Gopher's earlier letter) covers the dispute before the Board. And finally, as established herein, the CBA and its meaning lie at the center of the dispute—i.e., whether Gopher had cause/was within its contractual right to discharge (b) (6), (b) (7)(C). Respectfully, therefore, Gopher once again requests deferral.

Sincerely,

STINSON LEONARD STREET LLP



Richard Pins





(b) (6), (b) (7)(C) 2015

(b) (6), (b) (7)(C)

Dear (b) (6), (b) (7)(C)

On (b) (6), (b) (7)(C), 2015, you were involved in an incident in which you refused to follow the orders of management and engaged in the use of threatening, abusive, and/or profane language toward a member of management. During the subsequent investigation, you engaged in threatening, intimidating, and coercing conduct toward another employee and dishonesty both in your statement of the incident and in the effort to persuade another employee to provide dishonest testimony.

Your conduct represents multiple serious infractions of the company's work rules around insubordination and truthfulness. As a result, your employment with Gopher Resource has been terminated, effective (b) (6), (b) (7)(C) 2015.

A pay check for all hours worked through (b) (6), (b) (7)(C), 2015 should have been deposited directly into your account on (b) (6), (b) (7)(C) 2015. A final pay check for any unused time off balances will be deposited directly into your account on (b) (6), (b) (7)(C), 2015. Employee Benefits Corporation will be contacting you in regard to continued health coverage options through COBRA.

Regards,

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

April 27, 2015

*Via PDF email* ([tyler.wiese@nrlrb.gov](mailto:tyler.wiese@nrlrb.gov))

Tyler Wiese  
Attorney  
National Labor Relations Board  
Region 18

Re: **Gopher Resource, LLC ("Gopher")**  
**Charge No. 18-CA-148260**

Dear Mr. Wiese:

Gopher submits this additional correspondence in response to the Board's request for Gopher's position statement and further discussion of *Collyer* deferral.

According to the Board's April 6, 2015 Request for Evidence, (b) (6), (b) (7)(C)'s allegation is now as follows:

On or about (b) (6), (b) (7)(C) 2014, Gopher Resources ("Employer") suspended and subsequently terminated employee (b) (6), (b) (7)(C) in retaliation for complaints about (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), which in turn constituted protected concerted activity under the National Labor Relations Act.

Gopher disputes (b) (6), (b) (7)(C)'s allegations. Gopher believes, however, that the proper forum for this dispute is not the Board, but rather the bargained-for grievance and arbitration process found within the collective bargaining agreement between Gopher and Teamsters Local 120 (the "CBA"). Thus, as stated in its April 7, 2015 correspondence to the Board, Gopher respectfully requests that the Board defer the above-referenced charge to arbitration.

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(b) (6), (b) (7)(C) apparently now alleges that (b) (6), (b) (7)(C) was suspended and subsequently terminated in retaliation for complaints about a supervisor. This is a departure from the allegations contained within the charge as originally filed, which state that Gopher interfered with, restrained and coerced its employees by

threatening them that claims against the Company will lose, by creating the impression of surveillance and threatening employees "that they could lose their jobs, but management cannot." The charge as originally filed also contained a vague allegation that (b) (6), (b) (7)(C) discriminated against (b) (6), (b) (7)(C) by suspending then terminating (b) (6), (b) (7)(C) and that, since October 2014, (b) (6), (b) (7)(C) threatened and discriminated against employees. Nowhere in the original charge did (b) (6), (b) (7)(C) allege that (b) (6), (b) (7)(C) was disciplined in retaliation for making a complaint.

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See CBA Art. 7. More specifically, it is and will Gopher's position at the arbitration that "no warning notice needed be given" (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) was discharged for **dishonesty** and a **major violation of Employer's Rules**.

To be sure, neither (b) (6), (b) (7)(C) nor the Union could or would dispute the significance of Article 7 of the CBA to this matter or in the dispute resolution process. Indeed, the grievance at issue, which arises out of the exact same set of facts, states:

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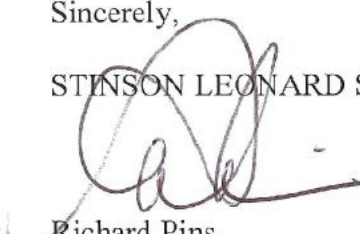
### III. Conclusion

There is no merit to the newly-contrived charge at issue. It is nothing more than a garden-variety discipline/discharge grievance masquerading, after the fact, as an unfair labor practice. Absent outright dismissal by the Board, however, it should be deferred in accordance with *Collyer*.

The parties have a long-standing collective bargaining relationship. Gopher has not exhibited, nor has the Union even suggested that Gopher has enmity toward its employees' exercise of protected rights. Gopher is willing to arbitrate the dispute—in fact, the parties are presently in the process of striking arbitrators—and Article 6 of the parties' CBA (outlined in Gopher's earlier letter) covers the dispute before the Board. And finally, as established herein, the CBA and its meaning lie at the center of the dispute—i.e., whether Gopher had cause/was within its contractual right to discharge (b) (6), (b) (7)(C). Respectfully, therefore, Gopher once again requests deferral.

Sincerely,

STINSON LEONARD STREET LLP



Richard Pins

**From:** [Pins, Richard](#)  
**To:** [Wiese, Tyler](#)  
**Subject:** RE: follow up on Gopher Resources deferral request  
**Date:** Thursday, April 30, 2015 3:59:44 PM

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Yes, it is.

**Richard W. Pins** | Partner | Stinson Leonard Street LLP  
150 South Fifth Street, Suite 2300 | Minneapolis, MN 55402  
T: 612.335.7007 | M: 612.965.1805 | F: 612.335.1657  
[rick.pins@stinsonleonard.com](mailto:rick.pins@stinsonleonard.com) | [www.stinsonleonard.com](http://www.stinsonleonard.com)

(b) (6), (b) (7)(C) @stinsonleonard.com

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**From:** Wiese, Tyler [<mailto:Tyler.Wiese@nlrb.gov>]  
**Sent:** Thursday, April 30, 2015 2:56 PM  
**To:** Pins, Richard  
**Subject:** follow up on Gopher Resources deferral request

Rick,

Could you confirm to me, in writing that the Employer is waiving any timeliness defenses regarding the (b) (6), (b) (7)(C) grievance? This is a prerequisite to deferral under *Collyer*.

Thanks,

Tyler

---

Tyler Wiese | Attorney  
National Labor Relations Board  
Region 18  
**NOTE NEW ADDRESS:**  
Federal Office Building  
212 3<sup>rd</sup> Ave S, Ste 200  
Minneapolis, MN 55401  
T: 612-348-1784 | F: 612-348-1785 | E: [tyler.wiese@nlrb.gov](mailto:tyler.wiese@nlrb.gov)





UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 18  
Federal Office Building  
212 Third Avenue South, Suite 200  
Minneapolis, MN 55401-2657

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (612)348-1757  
Fax: (612)348-1785

May 6, 2015

RICHARD W. PINS, ATTORNEY  
STINSON LEONARD STREET  
150 S 5TH ST STE 2300  
MINNEAPOLIS, MN 55402-4223

MATTHEW C. TEWS, ATTORNEY  
STINSON LEONARD STREET  
150 SOUTH FIFTH STREET  
SUITE 2300  
MINNEAPOLIS, MN

(b) (6), (b) (7)(C)

Re: GOPHER RESOURCES  
Case 18-CA-148260

Dear Mr. PINS, Mr. TEWS, (b) (6), (b) (7)(C):

We have carefully considered investigated and considered your charge that GOPHER RESOURCES has violated the National Labor Relations Act. As explained below, I have decided that certain allegations of the charge should be dismissed and that the allegation that the Employer disciplined or terminated an employee in retaliation for the employee's Union or protected concerted activity should be deferred.

**Decision to Dismiss:** Based on the investigation, I have decided to dismiss the charge insofar as it alleges that the Employer violated Section 8(a)(1) of the Act by threatening employees that they can lose their jobs or that they will lose any claims they make against the Employer or by creating the impression of surveillance.

**Decision to Defer:** Based on our investigation, I am deferring further proceedings on the charge in this matter to the grievance/arbitration process insofar as it alleges that the Employer disciplined or terminated employee (b) (6), (b) (7)(C) in violation of the Act. I defer that allegation for the following reasons:

1. The Employer and Teamsters Local 120 have a collective-bargaining agreement currently in effect that provides for final and binding arbitration.

2. The 8(a)(3) allegation that the Employer disciplined or discharged employee (b) (6), (b) (7)(C) because of (b) (6) Union and/or concerted protected activities is encompassed by the terms of the collective-bargaining agreement.

3. The Employer is willing to process a grievance concerning the issues related to the discipline or termination of (b) (6), (b) (7)(C) and will arbitrate the grievance if necessary. The Employer has also agreed to waive any time limitations in order to ensure that the arbitrator addresses the merits of the grievance.

4. Since the issues in the charge related to (b) (6), (b) (7)(C) discipline and discharge appear to be covered by the provisions of the collective-bargaining agreement, it is likely that the issues may be resolved through the grievance/arbitration procedure.

**Deferral Policy:** The Board's deferral policy provides that the Board will postpone making a final determination on a charge when a grievance involving the same issue can be processed under the grievance/arbitration provision of the applicable contract. This policy is partially based on the preference that the parties use their contractual grievance procedure to achieve a prompt, fair, and effective settlement of their disputes. Therefore, if an employer agrees to waive contractual time limits and process the related grievance through arbitration if necessary, the Board's Regional Office will defer the charge.

**Further Processing of the Charge:** As explained below, while the charge is deferred, the Regional office will monitor the processing of the grievance and, under certain circumstances, will resume processing of the charge.

*Charging Party's Obligation:* Under the Board's *Collyer* deferral policy, the Charging Party has an affirmative obligation to file a grievance, if a grievance has not already been filed. If the Charging Party fails either to promptly submit the grievance to the grievance/arbitration process or declines to have the grievance arbitrated if it is not resolved, I may dismiss the charge.

*Union/Employer Conduct:* If the Union or Employer fails to promptly process the grievance under the grievance/arbitration process; declines to arbitrate the grievance if it is not resolved; or if a conflict develops between the interests of the Union and the Charging Party, I may revoke deferral and resume processing of the charge.

*Charged Party's Conduct:* If the Charged Party prevents or impedes resolution of the grievance, raises a defense that the grievance is untimely filed, or refuses to arbitrate the grievance, I will revoke deferral and resume processing of the charge.

*Monitoring the Dispute:* Approximately every 90 days, the Regional Office will ask the parties about the status of this dispute to determine if the dispute has been resolved and if continued deferral is appropriate. However, at any time, a party may present evidence and request dismissal of the charge, continued deferral of the charge, or issuance of a complaint.

*Notice to Arbitrator Form:* If the grievance is submitted to an arbitrator, please sign and submit to the arbitrator the enclosed “Notice to Arbitrator” form to ensure that the Region receives a copy of an arbitration award when the arbitrator sends the award to the parties.

*Review of Arbitrator’s Award or Settlement:* If the grievance is arbitrated or settled, the Charging Party may ask the Board to review the arbitrator’s award or settlement. The request must be in writing and addressed to me. If the request concerns an arbitrator’s award, the request should analyze whether the arbitration process was fair and regular, whether the unfair labor practice allegations in the charge were considered by the arbitrator, and whether the award is consistent with the Act. Further guidance on this review is provided in *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955) and *Olin Corp.*, 268 NLRB 573 (1984). If the request concerns a grievance settlement, see *Alpha Beta*, 273 NLRB 1546 (1985). These Board decisions are available on our website, [www.nlr.gov](http://www.nlr.gov).

*Change in Standards if Parties Agree to Submit Statutory Issue to Arbitrator:* If during the processing of the grievance the parties agree to authorize the arbitrator to decide the statutory issue, please advise me in writing.

**Charging Party’s Right to Appeal:** The Charging Party may appeal my decision to defer this charge by filing an appeal with the General Counsel of the National Labor Relations Board, through the Office of Appeals. An appeal may be filed by submitting the enclosed Appeal Form (form NLRB-4767), which is also available at [www.nlr.gov](http://www.nlr.gov). However, we encourage the Charging Party to submit a complete statement setting forth the facts and reasons why the decision to defer the charge is incorrect.

*Means of Filing:* An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal **MAY NOT** be filed by fax or email. To file an appeal electronically, go to the Agency’s website at [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street NW, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

*Appeal Due Date and Time:* The appeal is due on May 20, 2015. If the appeal is filed electronically, the transmission of the entire document through the Agency’s website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than May 19, 2015. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.



*Extension of Time to File Appeal:* The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before** May 20, 2015. The request may be filed electronically through the ***E-File Documents*** link on our website [www.nlrb.gov](http://www.nlrb.gov), by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after May 20, 2015, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

*Confidentiality:* We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/ Marlin O. Osthus

MARLIN O. OSTHUS  
Regional Director

Enclosures

cc: CATHERINE ABUBO, HR  
GOPHER RESOURCES  
3385 DODD ROAD  
EAGAN, MN 55121

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**NOTICE TO ARBITRATOR**

TO: \_\_\_\_\_  
(Arbitrator)

\_\_\_\_\_  
(Address)

\_\_\_\_\_

NLRB Case Number  
**18-CA-148260**

NLRB Case Name: GOPHER RESOURCES

A determination has been made by the Regional Director of Region 18 of the National Labor Relations Board to administratively defer to arbitration the further processing of the NLRB charge in the above matter. Further, both parties to the NLRB case have agreed to proceed to arbitration before you in order to resolve the dispute underlying the NLRB charge.

So that the Regional Director can be promptly informed of the status of the arbitration, the undersigned hereby requests that a copy of the arbitration award be sent to Regional Director, Region 18, Federal Office Building, Minneapolis, MN 55401-2657 at the same time that it is sent to the parties in the arbitration.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

**APPEAL FORM**

To: General Counsel  
Attn: Office of Appeals  
National Labor Relations Board  
1099 14th Street NW  
Washington, DC 20570-0001

Date:

I am appealing the action of the Regional Director in deferring the charge in

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Case Name(s).

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Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

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*(Signature)*





UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 18  
Federal Office Building  
212 Third Avenue South, Suite 200  
Minneapolis, MN 55401-2657

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (612)348-1757  
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Agent's Direct Dial: (612)348-1784

August 20, 2015

RICHARD W. PINS, ATTORNEY  
STINSON LEONARD STREET  
150 S 5TH ST STE 2300  
MINNEAPOLIS, MN 55402-4223

MATTHEW C. TEWS, ATTORNEY  
STINSON LEONARD STREET  
150 SOUTH FIFTH STREET  
SUITE 2300  
MINNEAPOLIS, MN

Re: GOPHER RESOURCES  
Case 18-CA-148260

Dear Mr. PINS, Mr. TEWS:

On May 6, 2015, the above matter was deferred to the parties' grievance/arbitration process.

Please complete the enclosed questionnaire or otherwise inform me in writing by September 3, 2015 of the status of the underlying grievance(s). If the matter is still pending, please state specifically where in the grievance/arbitration procedure it is pending. If the matter has been resolved, please explain the nature of the settlement and the amount of any backpay paid pursuant to the settlement.

You are encouraged, but not required, to e-file your response by going to the Agency's website at [www.nlr.gov](http://www.nlr.gov), clicking on **E-File Documents**, entering the NLRB Case Number, and following the detailed instructions.

If you have any questions concerning this matter, you can reach me at the number above or leave a message and I will contact you.

Very truly yours,

/s/ Tyler Wiese

TYLER J. WIESE  
Field Attorney

Enclosure (Questionnaire)





STINSON  
LEONARD  
STREET

Richard W. Pins  
612.335.7007 **DIRECT**  
richard.pins@stinsonleonard.com

September 3, 2015

Tyler J. Wiese  
Field Attorney  
National Labor Relations Board  
Region 18  
Federal Office Building  
212 Third Avenue South, Suite 200  
Minneapolis, MN 55401-2657

Re: Gopher Resources  
Case 18-CA-148260

Dear Mr. Wiese:

Thank you for your letter of August 20, 2015, inquiring into the status of the above referenced matter. The matter is set for arbitration before Arbitrator Nancy Powers on Friday, September 18, 2015. We have also e-filed this letter response with the NLRB.

Sincerely,

Stinson Leonard Street LLP

  
Richard W. Pins  
RWP, (b) (6), (b) (7)



**From:** [Pins, Richard](#)  
**To:** [Wiese, Tyler](#)  
**Subject:** FW: Gopher Teamsters Chapman  
**Date:** Wednesday, November 4, 2015 2:57:25 PM

---

**Richard W. Pins** | Partner | Stinson Leonard Street LLP  
150 South Fifth Street, Suite 2300 | Minneapolis, MN 55402  
T: 612.335.7007 | M: 612.965.1805 | F: 612.335.1657  
rick.pins@stinson.com | [www.stinson.com](http://www.stinson.com)

(b) (6), (b) (7)(C) @stinson.com

---

**From:** Katrina Joseph [mailto:kjoseph@teamsterslocal120.org]  
**Sent:** Monday, September 14, 2015 11:08 PM  
**To:** Nancy Powers  
**Cc:** Pins, Richard  
**Subject:** Re: Gopher Teamsters Chapman

Arbitrator Powers:

The Union is withdrawing the above grievance, and accordingly, the hearing scheduled for this Friday is no longer necessary. Please send the Union your statement for the cancellation fee. Thank you.

Katrina E. Joseph  
General Counsel

TEAMSTERS LOCAL NO. 120  
9422 Ulysses Street NE  
Blaine, MN 55434  
Direct: (763) 267-6146  
Main: (763) 267-6146  
Fax: (763) 267-6121  
Email: [kjoseph@teamsterslocal120.org](mailto:kjoseph@teamsterslocal120.org)

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Please consider the environment before printing this e-mail.

On Jun 4, 2015, at 9:55 AM, Nancy Powers <[ndpowers99@gmail.com](mailto:ndpowers99@gmail.com)> wrote:

OK

Nancy Powers

[ndpowers99@gmail.com](mailto:ndpowers99@gmail.com)

On Jun 4, 2015, at 9:09 AM, Pins, Richard <[rick.pins@stinsonleonard.com](mailto:rick.pins@stinsonleonard.com)> wrote:

This one will be at Gopher Resources, which is located at 685 Yankee Doodle Road \* Eagan, Minnesota 55121. 9:00 a.m. start time?

Richard W. Pins | Partner | Stinson Leonard Street LLP

150 South Fifth Street, Suite 2300 | Minneapolis, MN 55402

T: 612.335.7007 | M: 612.965.1805 | F: 612.335.1657

[rick.pins@stinsonleonard.com](mailto:rick.pins@stinsonleonard.com) | <http://www.stinsonleonard.com>

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) [\[REDACTED\]@stinsonleonard.com](mailto:[REDACTED]@stinsonleonard.com)

This communication (including any attachments) is from a law firm and may contain confidential and/or privileged information. If it has been sent to you in error, please contact the sender for instructions concerning return or destruction, and do not use or disclose the contents to others.

-----Original Message-----

From: Nancy Powers [<mailto:ndpowers99@gmail.com>]

Sent: Thursday, June 04, 2015 6:31 AM

To: Katrina Joseph

Cc: Pins, Richard; Christopher Riley

Subject: Re: Gopher Teamsters (b) (6), (b) (7)(C)

Where and when? It's on my calendar.

On Jun 3, 2015, at 10:38 PM, Katrina Joseph

<[kjoseph@teamsterslocal120.org](mailto:kjoseph@teamsterslocal120.org)> wrote:

September 18 works for the Union.

Katrina E. Joseph  
General Counsel

TEAMSTERS LOCAL NO. 120

9422 Ulysses Street NE  
Blaine, MN 55434  
Direct: (763) 267-6146  
Main: (763) 267-6146  
Fax: (763) 267-6121  
Email: [kjoseph@teamsterslocal120.org](mailto:kjoseph@teamsterslocal120.org)

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Please consider the environment before printing this e-mail.



On 5/29/15, 3:08 PM, "Nancy Powers"  
<[ndpowers99@gmail.com](mailto:ndpowers99@gmail.com)> wrote:

Thank you for selecting me. I have July 17 and  
September 18, 2015  
available. Please let me know if either works for you.

**From:** [Wiese, Tyler](#)  
**To:** (b) (6), (b) (7)(C)  
**Subject:** update on gopher resources ulp charge  
**Date:** Monday, November 9, 2015 10:25:00 AM

---

(b) (6), (b) (7)(C)

I tried to leave you a message but your mailbox is full. I need to know whether you are going to be withdrawing the deferred ulp charge in Gopher resources that we talked about last Tuesday. If I do not hear back from you by Wednesday of this week, your charge may be dismissed for noncooperation.

Thanks,

Tyler



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 18  
Federal Office Building  
212 Third Avenue South, Suite 200  
Minneapolis, MN 55401-2657

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December 4, 2015

RICHARD W. PINS, ATTORNEY  
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150 S 5TH ST STE 2300  
MINNEAPOLIS, MN 55402-4223

MATTHEW C. TEWS, ATTORNEY  
STINSON LEONARD STREET  
150 SOUTH FIFTH STREET, SUITE 2300  
MINNEAPOLIS, MN

Re: GOPHER RESOURCES  
Case 18-CA-148260

Dear Mr. Pins, and Mr. Tews:

This is to advise you that I have approved the withdrawal of the charge in the above matter.


Very truly yours,

/s/ Marlin O. Osthus

MARLIN O. OSTHUS  
Regional Director

cc: CATHERINE ABUBO, HR  
GOPHER RESOURCES  
3385 DODD ROAD  
EAGAN, MN 55121

(b) (6), (b) (7)(C)

A large black rectangular redaction box covers the bottom portion of the document, obscuring several lines of text.